United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

76-7083

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 76-7083

FREQUENCY ELECTRONICS, INC.,
Plaintiff-Appellee

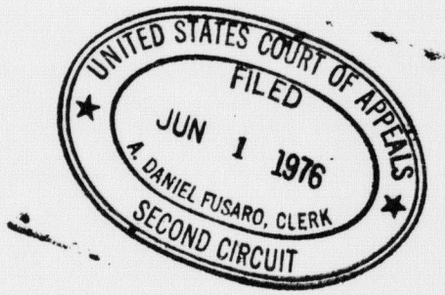
-against-

NATIONAL RADIO COMPANY, INC.,
Defendant

-and-

LOUIS LERNER
Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK



RECORD APPENDIX

- VOL. I -

Edwin J. Carr, Esquire
Rich, May & Bilodeau
One State Street
Boston, Massachusetts 02109
Phone: (617) 742-6550
Attorney for Defendant-
Appellant

Local Counsel:

Chester J. Straub, Esquire
Willkie, Farr & Gallagher
One Chase Manhattan Plaza
New York, New York 10005
Phone: (212) 248-1000

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

FREQUENCY ELECTRONICS, INC., Plaintiff-Appellee, -against- NATIONAL RADIO COMPANY, INC., Defendant, -and- LOUIS LERNER, Defendant-Appellant.	No. 76-7083

Index To The Record Appendix

	Page
Docket Entries	(vi)
Plaintiff's Complaint and Exhibits Thereto	1
Answer of Defendant Lerner	38
Opinion of Judge McMahon, 342, F.Supp.1159 (SDNY 1922)	50
Memorandum and Order of Brieant, J. Dismissing Third-Party Complaint	60
Counterclaims of Defendant Lerner	64
Answer of Plaintiff Frequency to Counter-claims of Defendant Lerner	66
Pre-Trial Order	68
Findings and Conclusions of Judge Brieant Dated December 9, 1975, No. 43507 (Microfilm 121075)	87

		Page
Judgment No. 76,054 - Dated January 16, 1976, Entered January 19, 1976.		105
Notice of Appeal by Defendant Louis Lerner Entered February 13, 1976		106
Transcript of Record of Proceedings Before Brieant, J. held June 9, 10 and 11, 1975, as follows:		
Trial Transcript - June 9, 1975		107
Trial Transcript - June 10, 1975		196
Trial Transcript - June 11, 1975		311
Selected Trial Exhibits, as follows:		
	Plaintiff's Trial Exhibits Included In This Record Appendix	
1	Purchase and Sales Agreement dated February 3, 1969, Exhibit 1 to the Complaint	12
2	$200,000 Note, Exhibit "C" to the Purchase and Sale Agreement	28
9	Assignment of Patents and Schedule Thereto	446
10	Bill of Sale and Exhibit Thereto	448
14	Assignment of $200,000 Note dated April 9, 1970	453
24	Letter from Middlesex Bank to Frequency Dated January 20, 1971	454
28	Letter from Lerner to Middlesex Bank Dated March 3, 1970	455
46	Preliminary Memorandum Dated November 14, 1968	456
49	Pages 29, 30, 31, 38, 39 and 44 from the "File Wrapper" of the Zacharias Patent.	463

		Page
58	Article From The New York Times - Thursday, October 4, 1956, Entitled "Atom Timepiece Displayed Here"	469
71	Letter from Middlesex Bank to Frequency Dated August 12, 1970	471
72	Letter from Middlesex Bank to Frequency Dated July 20, 1970	472
73	Letter From Middlesex Bank to Frequency Dated January 20, 1970	473
81	Assignment of Trademark from National Radio To Frequency Dated January 31, 1969	474
83	Letter From Middlesex Bank to Lerner, Dated March 1, 1971	475
	Defendant's Trial Exhibits Included In This Record Appendix	
A	Security Agreement Dated February 3, 1969, Between Frequency and National Radio Together With Exhibits A and B Thereto	476
G	Minutes of the Board of Directors Meeting of Frequency Held January 21, 1969	484
H	Minutes of the Board of Directors of Frequency Held April 29, 1969	487
I	Minutes of the Board of Directors of Frequency Held July 31, 1969	489
J	Minutes of the Board of Directors of Frequency Held March 19, 1970	491
K	Minutes of the Board of Directors of Frequency Held May 13, 1971	493
M	Annual Report of Frequency for 1971	496

		Page
N	Agreement Between Frequency and National Dated June 27, 1969	504
O	Letter Agreement Between Frequency and National Dated as at December 30, 1968	506
P	$325,000 Promissory Note Dated February 3, 1969	509
Q	Assignment of $325,000 Note From National Radio to Lerner Dated April 9, 1970	511
U	Letter From National to Lerner Dated April 24, 1970	512
V	Assignment of Frequency $200,000 and $325,000 Notes From National Radio to Middlesex Bank Dated November 6, 1969	514
W	Credit File of Middlesex Bank on National Radio	515
X	Minutes of Board of Directors Meeting of National Radio Held April 24, 1970	520
Y	Memorandum From Clarence S. Lyon, Esquire, of Messrs. Kenway, Jenney and Hildreth to Gideon Cashman, Esquire of Messrs. Pryor, Braun, Cashman and Sherman, Dated March 17, 1971	524
Z	Letter from Hewlett-Packard to Lyon, Dated August 24, 1970	531
AA	Letter From Hewlett-Packart to Lyon, Dated September 17, 1970	532
AB	Letter From Hewlett-Packard to Lyon, Dated October 1, 1970	534

		Page
AC	Letter from Hewlett-Packard to Lyon, Dated October 13, 1970	535
AD	Letter From Lyon to E. Whitney Drake, Esquire, National Radio Company, Inc., Dated November 20, 1968	536
AE	Affidavit of Clarence S. Lyon, Subscribed and Sworn to on February 10, 1972, Together With Exhibit A Thereto	538
AI	Letter From Lyon to Hewlett-Packard Dated June 19, 1970	543
AG	Excerpts From Lyon Deposition Taken March 11, 1974	544
AH	Excerpts From Lyon Deposition Taken August 13, 1974	582
AJ	Excerpts From Oddi Deposition Taken November 27, 1974	590
AK	Excerpts From Drake Deposition Taken December 3, 1974	629
	Admissions of Defendant Lerner Read Into Record at Trial of the Case on June 9, 1975 (Tr.p.12-16; Record Appendix pp. 118-122).	682

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

72 CIV. 412

D. C. Form No. 106 Rev.

TITLE OF CASE

FREQUENCY ELECTRONICS, INC.

AGAINST,

NATIONAL RADIO COMPANY, INC. AND
LOUIS LERNER

defts. & 3rd pty. pltffs.

-v-

HERBERT W. KENWAY
MELVIN R. JENNEY
RICHARD R. HILDRETH
HERBERT P. KENWAY
L. WILLIAM BERTELSEN
JEREMIAH LYNCH
GEORGE W. CROWLEY
CLARENCE S. LYON
ROBERT J. HORN, JR.
TOWNSEND M. GUNN
JOHN A. LAHIVE, JR. and
HENRY D. PAHL, JR., as co-partners under the firm name and style of KENWAY, JENNEY & HILDRETH (now Kenway & Jenney)

3rd pty. defts. (12-11-73)

ATTORNEYS

For plaintiff:
~~FRICK, HIXON, GAGHMAN & SHERMAN~~
~~120 Park Avenue,~~
N.Y.C.N.Y. 10022 2-26-76

Vincenti & Schickler
225 Bway, NYC 10005--WO 4-8181

For defendant: Leonard I. Schreiber (for Louis Lerner) 30 Park Avenue, NY 10017
689 1810

STATISTICAL RECORD	COSTS
J.S. 5 mailed X	Clerk
J.S. 6 mailed ✓	Marshal
Basis of Action: PROMISSORY NOTE, $1,233,000.00	Docket fee
Action arose at:	Witness fees
	Depositions

DATE	NAME OR RECEIPT NO.	REC.	DISB.
[illegible]	[illegible]	15 —	
2/1/72	[illegible]		15 —
7/19/72	I Schreiber	5 —	
7/21/72	U S Treas.		5 —

BEST COPY AVAILABLE

FREQUENCY ELECTRONICS, INC. vs. NATIONAL RADIO COMPANY, INC. ET-ANO

72 CIV. 412

DATE	PROCEEDINGS
JAN28-72	FILED PETITION FOR REMOVAL FROM SUPREME CT. STATE & COUNTY OF N.Y.
JAN28-72	FILED REMOVAL BOND, $500.00 ST. RAUL FIRE & MARINE INSURANCE COMPANY.
Feb 3/72	Filed Order to Show Cause Re: Preliminary Injuncation ret 2/8/72
Feb 3/72	Filed Memorandum in support of pltff's motion for a preliminary injunction
Feb.7-72	Filed stipulation adjourning motion now ret. 2/8/72 to 2/15/72.
Feb 14/72	Filed Dft. Lerner's memorandum in opposition to pltff's application for preliminary injuncation. etc.
Feb 14/72	Filed Dft. Lerner opposition to pltff's application for preliminary injunction., etc.
Feb.14-72	Filed stipulation and order enlarging time in which deft.Lerner may file his answer to 2/28/72. So ordered. MacMahon, J.
Feb.16-72	Filed Bond ($32,500. The Aetna Casualty and Surety Co.) Approved as toform and sufficiency.MacMahon, J.
Feb.28-72	Filed stipulation and order extending defendant Lerner's time to answer complaint to 3/6/72. So ordered. Tenney, J.
Mar 7.72	Filed Answer of dft. Louis Lerner. LIS
Mar.14-72	Filed Notice to take Depositions upon oral examination.
Mar 20.72	Filed Notice of Motion. Re: Transfer & ret. 3/28/72. by Dft.
Mar 20.72	Filed Dft. Memorandum in support of dft. Lerner's motion for transfer,etc.
Mar 27.72	Filed Stip adjourning motion now ret. 3/28/72 to 4/11/72.
Mar 30 72	Filed Dft Louis Lerner,etc. Notice to take deposition upon pltff
Apr.10-72	Filed stimulation adjourning motion now ret. 4/11/72 to 4/18/72.
Apr 14.72	Filed Pltff Affidavit in opposition to motion for change of venue.
Apr 14,72	Filed Memorandum of pltff. in opposition to moition of dft. Lerner for change of venue.
Apr 25.72	Filed Memorandum Endorsed on motion paper dated 3/20/72. Dft. Lerner moves to transfer ~~xx~~ action, e tc. In ~~xx~~ the exercise of the court's discretion, dft's motion is denied. McLean J.
Feb.15-72	Filed (in court) Plaintiff's Reply Memorandum in support of motion for Preliminary Injunction and in opposition to defendants' application to vacate temp.rest. order.
Feb.15-72	Filed Affidavit of Louis C. Lerner.
May 16-72	Filed OPINION #38490. MacMahon, J. The motion for a pre. inj. is granted upon condition that pltf. post a bond in the amt. to be fixed by the court in the order to be settled on this decision. SETTLE ORDER ON NOTICE within 10 days. (mailed notice).
Jun 21-72	Filed MEMO.END. motion papers filed 6/21/72. The within motion for reargument is granted, and on reargument the Court adheres toits original decision.
Jun 21-72	Filed Notice of Motion re: Reargue, Ret. 6/6/72.
Jun 21-72	Filed Preliminary Injunction. Ordered that deft. Louis Lerner, his agents, etc. are restrained and enjoined pending the determination of this action. MacMahon, J.
Jun 21.72	Filed Reply Memorandum of dft. Lerner in support of motion for ~~xxx~~ reargument.
Jun 21.72	Filed Memorandum in opposition to dft's motion for reargument.
Jun 21.72	Filed Schedule of monies.
Jun 29.72	Filed Rider to be attached to & Form Part of Bond No. 73 S 10956 BCA in the amount of $32,500. by Aetna Life & Casualty.
Jul 19-72	Filed Defts Louis Lerner Notice of appeal to USCA. m/n
Jul 19-72	Filed Defts Louis Lerner Bond on Appeal for 250.00 by ST. Paul Fire & Marine Ins.
Feb 15.72	Filed Affidavit of Sanford M. Goldman in opposition to the application of dft. Louis Lerner to vacate the temporary restraining order. Entered 8 (Filed in court)
Aug 24-72	Certified copy to the USCA.

DATE	PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
Nov.5-73	Filed pltffs notice to take depositions of deft Louis Lerner, & production of documents re Nat'l Radio Co.	
Dec. 11-73	Filed deft's notice of motion for 3rd pty. complaint-	
Dec. 11-73	Filed memo endorsed on motion filed 12-11-73-Motion granted. No opposition. So ordered--Brieant,J.	
Dec. 13-73	Filed affdvt. & order appointing individual for service--Clerk.	
Dec. 13-73	Filed 3rd pty. complaint & issued 3rd pty. summons.	
Dec. 13-73	Filed affdvt. in support of request for 30 day summons.	
Jan. 28-74	Filed stip. & order extending 3rd pty. defts' time to answer to 1-31-74-Brieant,J.	
Feb. 7-74	Filed deft's(L.Lerner) notice to take deposition of 3rd pty. defts.	
Feb. 8-74	Filed stip. & order extending time of 3rd pty. deft. to answer 3rd pty. complaint to 2-13-74--Brieant,J.	
Feb. 8-74	Filed deft's(L.Lerner)notice to take deposition of Melvin R. Jenney,et al	
Feb. 14-74	Filed summons & affdvt. of service, served defts. George W. Crowley & Jeremiah Lynch on 12-17-73-- served defts. John A. Lahive,Jr. & Henry D. Pahl,Jr. 12-18-73--served defts. Melvin R. Jenney,Herbert W. Kenway, Robert J. Horn,Jr. & Townsend M. Gunn-12-26-73--served Clarence S. Lyon - 2-13-74-	
Feb 14-74	Pre-trial conference held	
Apr.10-74	Filed 3rd/pty. deft. notice of motion to dismiss 3rd.pty.complaint.	
Apr.10-74	Filed 3rd.pty. deft. memo of law.	
Apr.10-74	Filed affdvt. of Clarence S. Lyon.	
Apr.10-74	Filed affdvt. of Henry D. Pahl, Jr. in support of motion to dismiss.	
Apr.10-74	Filed 3rd.pty pltf. opposition to motion to dismiss.	
Apr.10-74	Filed 3rd.pty. pltf. motion for leave to file amended 3rd.pty complaint.	
Apr.10-74	Filed 3rd.pty pltf. memo in support of opposition to motion to dismiss.	
May 21-74	Filed 3rd-pty defts reply memo of law.	
May 21-74	Filed affdvt. of Clarence S. Lyon.Re: deposition.	
May 21-74	Filed MEMO & ORDER. The amended 3rd.pty.complaint is dismissed as to 3rd. pty defts. Kenway & Jenney. BRIEANT,J. (n/m)	
Oct. 9-74	Filed counterclaim by deft (Lerner) against pltff.	
Oct.9-74	Filed Memo-End. that within paper (counterclaim) may be filed. So Ordered, BRIEANT,J.	
Oct.9-74	Filed deft (Lerner) motion to modify prelim. inj. & for leave to file counterclaim.	
Oct.9-74	Filed Memo-End. on motion of 10-9-74. Motion granted to the extent of permitting service & filing the proposed counter-claims & the prosecution thereof. No Opposition. So Ordered, BRIEANT,J. m/n	

DATE	FILINGS—PROCEEDINGS
Oct 29-74	Filed Pltff's answer to counterclaims.
Nov 8-74	Filed Deft. L. Lerner's Notice to take deposition of Ray E. Horner.
Nov 8-74	Filed Deft. Louis Lerner's Notice to take deposition of Frank F. Oddi.
Dec 2-74	Filed Deft. Lerner's Notice to take Depsition ofE.W.Drake.
Dec 12-74	Filed Pltff's Notice to take deposition of John A. Lynch.
Dec 23-74	Filed Memorandum of Pltff. in opposition to motion to increase security.
Dec 23-74	Filed Affdvt. of the Pres. of Freq. Electronics. dated 12-17-74.
12-16-74	PRE-TRIAL CONFERENCE HELD BY MAG. SCHREIBER
Dec 27-74	Filed Answers & Objections of deft. Lerner to Pltff's request for admissions.
Jan 7-75	Filed Deft. L. C. Lerner's Notice to take dposition of pltff.
Jan 14-75	Filed Deft. Lerner's Notice of Motion to increase security under Rule 65(c) FRCP.
Jan 14-75	Filed Memo-End on back of motion filed 1-14-75...Motion to increase security under Rule 65(c) FRCP is denied...The parties to this action, which has heretofore been referred to Mag. Schreiber for all pre-trial purposes, should bend all their efforts towards making this litigation ready for a prompt trial. This should obviate the difficuties urged in support of the motion..So Ordered.. .....Brieant, J. m/n
1-24-75	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber
3-12-75	Filed Pltff's Notice to take depositions of parties listed.
3-20-75	Filed Pltff's Further Requests for Admissions....(exhibits attached in folder)
3-31-75	Filed Answers & Objections of Deft. Lerner to Pltff's further requests for admissions.
4-2-75	PRE-TRIAL CONFERENCE HELD BY Mag Schreiber
5-12-75	PRE-TRIAL CONFERENCE HELD BY Mag Schreiber
4-28-75	PRE-TRIAL CONFERENCE HELD BY Mag Schreiber
5-28-75	Filed Pre-Trial Order.....Brieant,J.
6-9-75	NON-JURY BEGUN 6-9-75 & CONTINUED TO, THEN CLOSED ON JUNE 11 — 3 DAY TRIAL — DECISION RESERVED.
7-14-75	Filed Pltff's Post-Trial Memorandum.
8-5-75	Filed Deft Lerner's Post Trial Memo,
8-6-75	Filed transcript of record of proceedings, dated June 9, 10, 11, 1975
9-8-75	Filed Pltff's Reply to deft's Post - Trial Memo.
12-9-75	Filed Findings and Conclusions...Accordingly, the pltff. is entitled to a judgment in the amount of [illegible],000, plus interest at 6% since Jan. 24, 72, and costs, the judgment shall state that that the pltff's outstanding note shall be cancelled and said note shall be so marked and returned to the pltff provided that upon payment, Promissory Note assigns to Lerner, free and clear of all claims of 3rd ptys, the 19 patents and all rights relating to the atomizitron, which items are set forth in more detail in the [illegible] sale agreement of 2-3-69..Settle Judgment on notice..Brieant,J. mn

(ix)

CONTINUED ON PAGE 5

DATE	PROCEEDINGS
1-19-76	Fld Letter from Rich May & Bilodeau by E. J. Carr dtd 1-14-76 to Dty Ck Cloist.
1-19-76	Fld Judgment #76,054.....Ordered that pltff's outstanding note in face amt of $325,000 is cancelled ant that said note shall be so marked by deft, Louis Lerner, and returned to pltff....and that pltff recover of deft Lottie Lerner, the sum of $42,000 with interest thereon at the rate of 6% from 1-24-72and costs of the action...and that upon payment of this judgment Pltff shall assign to deft Lerner, free and clear of all claims ofall claims of 3rd ptys, the 19 patents assigned to pltff by National Radio Co., Inc. under date of 2-3-69, and all data relating to the Atomichron....Brieant,J. .....mn.....Judgment Entered 1-20-76-Clerk ent 1-26-76.
2-13-76	Fld Deft. L. Cl Lerner's Notice of Appeal to USCA from judgment ent 1-19-76.. Copies mailed on 2-23-76 to: Pryor, Cashman & Sherman. Designation of Local Counsel on N of A..=Local Counsel..L.I. Schreiber Esq. of 30 Park Ave. NYC 10016--TEL# 689-1810.
2-26-76	Fld Order of Substitutuion of Counsel for pltff. ...VINCENTI & SCHICKELER are sub in place and in stead of Pryor, Cashman & Sherman.. .....Brieant,J.

D. C. 109 Criminal Continuation Sheet

(x)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

FREQUENCY ELECTRONICS, INC.,

Plaintiff,

- against -

NATIONAL RADIO COMPANY, INC., and LOUIS LERNER,

Defendants.

----------x

VERIFIED COMPLAINT

Plaintiff by its attorneys, Pryor, Braun, Cashman & Sherman, complaining of the defendants alleges:

FIRST CAUSE OF ACTION

1. Plaintiff Frequency Electronics, Inc. ("Frequency") is a corporation organized and existing under the laws of Delaware, and is duly authorized to transact business in the State of New York.

2. Upon information and belief, defendant National Radio Company, Inc. is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business within the Commonwealth of Massachusetts.

3. Upon information and belief, defendant National Radio Company, Inc., formerly known as National Company, Inc. ("National"), is in the business of manufacturing electrical components and equipment.

4. On or about February 3, 1969, plaintiff and National entered into an agreement (hereinafter referred to as the "Purchase Agreement") whereby plaintiff agreed to purchase, and did purchase, National's Atomichron product line, related inventory, machinery and equipment and all patents and trademarks used by National in connection with the Atomichron product line (all of same hereinafter being referred to as the "Atomichron Products"). In consideration therefor, Frequency agreed to pay the sum of $733,000.00, payment to be made as follows: $208,000.00 upon execution of the agreement, $200,000.00 by promissory note, payable on or before August, 1970, and $325,000.00 by promissory note payable in ten equal annual installments commencing on February 3, 1970. A copy of said Purchase Agreement is annexed hereto as Exhibit 1.

5. Prior to the execution of the Purchase Agreement, National had caused the development of certain frequency control apparatus, commonly known as an atomic clock device, which was sold under the trademark "Atomichron". Prior to the execution of the Purchase Agreement, defendant National sold and exploited the said Atomichron Products.

6. The Atomichron Products included as the principal innovation and development thereof, an invention which is described in United States Patent No. 2,972,115 of February 14, 1961 in the name of J.R. Zacharias, et al, entitled, "Molecular Beam Apparatus" (hereinafter referred to as the "Zacharias patent"

based upon an application filed on October 29, 1957. The invention of the Zacharias patent was and is of prime importance to the value of the Atomichron Products which are the subject matter of the Purchase Agreement.

7. During the course of negotiations leading to the execution of the Purchase Agreement, defendant National, through officers, agents and representatives, represented to plaintiff that the Zacharias invention and the Zacharias patent were of great value, and that the Zacharias patent afforded substantial protection to the owner thereof against the manufacture of devices which were competitive with the Atomichron Products incorporating the Zacharias invention as claimed in the Zacharias patent. Said representations were made to induce plaintiff to enter into the Purchase Agreement and plaintiff did enter into the Purchase Agreement and agreed to make the payments set forth therein, and in fact has already made payments totalling $450,000.00, all in justifiable reliance upon such representations.

8. Said representations were false and untrue in that:

(a) The Zacharias patent was then and is now invalid and unenforceable because the Zacharias invention was described in one or more printed publications circulated in this country more than one year prior to the date of application for said patent;

(b) The Zacharias patent was then and is now invalid and unenforceable because the Zacharias invention was in

public use more than one year prior to the date of application for said patent;

(c) The Zacharias patent was then and is now invalid and unenforceable because the Zacharias invention was on sale in this country more than one year prior to the date of application for the Zacharias patent.

In particular, prior to October 29, 1956, defendant National sold or delivered versions of the Atomichron Products to one or more agencies of the United States Government, caused articles to appear describing the Atomichron Products, and exhited, demonstrated and offered for sale the Atomichron Products; and in each such instance, the Atomichron Products sold, delivered, exhibited, demonstrated or offered for sale incorporated the invention disclosed, described and claimed in the Zacharias patent.

9. All of such information was known to the agents and representatives of defendant National during the course of the negotiations with plaintiff, and they knew that the warranties and representations made to plaintiff to induce it to purchase the Atomichron Products were false.

10. The agents and representatives of defendant National knowingly failed to apprise plaintiff, during negotiation of the facts set forth in paragraph 9 herein, and said persons knew that the failure to so apprise plaintiff would have the effect of misleading plaintiff and causing it to part with substantial value for an inadequate consideration.

11. By reason of the foregoing, plaintiff was in fact deceived and misled by said defendant and was induced into entering into the Purchase Agreement for a consideration far in excess of that which the Atomichron Products were worth, and was induced into making a total of $450,000.00 in payments thereon to date. In further reliance upon the frauds and deceptions of defendant National, plaintiff has sustained additional substantial damages in excess of $500,000.00.

12. Had plaintiff known of the true facts as aforesaid, including the invalidity of the Zacharias patent, it would not have entered into the Purchase Agreement, since the principal value to plaintiff of the properties acquired under the Purchase Agreement related to the Zacharias patent and its presumptive validity and enforceability against third parties, and it would not have sustained the additional damages referred to in paragraph 11 hereof.

13. Plaintiff is ready and willing and herein and hereby offers to return to defendant National all of the properties received under the Purchase Agreement including its entire right, title and interest in and to the Zacharias patent, and plaintiff herein and hereby demands rescission of the Purchase Agreement and return to it of the purchase price, as well as damages of not less than $500,000.00.

SECOND CAUSE OF ACTION

14. Plaintiff repeats and realleges the allegations of paragraphs 1 - 6 of this complaint with the same force and effect

as if herein set forth at length.

15. As an integral part of the Purchase Agreement defendant National assigned to plaintiff its entire right, title and interest to the Zacharias patent and expressly warranted to plaintiff that it had good title and the right to convey the said patent to plaintiff.

16. Defendant National has breached its said warranty because, in fact, it did not have title to said patent and plaintiff did not receive any valid interest in the Zacharias patent.

17. As a result of the aforesaid breach of warranty of defendant National, plaintiff has been damaged in the amount of not less than $1,233,000.00.

THIRD CAUSE OF ACTION

18. Plaintiff repeats and realleges the allegations of paragraphs 1 and 2 of this complaint with the same force and effect as if herein set forth at length.

19. At all relevant times hereinafter set forth, defendant Louis Lerner was a chief operating officer, director and controlling shareholder of National Radio Company, Inc. (formerly known as National, Inc.), a Massachusetts corporation engaged in the business of manufacturing electrical components and equipment. All acts or omissions hereinafter attributed to National Radio Company, Inc. or to its representatives were done by defendant Lerner or with the knowledge or at the direction of said defendant and for his personal benefit and profit and with the intention that plaintiff act upon them by purchasing the Atomichron

Products for a grossly inadequate consideration.

20. Plaintiff repeats and realleges the allegations of paragraphs 3 - 8 of the complaint with the same force and effect as if herein set forth at length.

21. Defendant Lerner participated in the negotiations with plaintiff leading to the sale of the Atomichron Products and execution of the Purchase Agreement, and knew of the facts set forth in paragraphs 7 and 8 of the complaint at that time. Said defendant further knew that his misrepresentations, or those of other representatives of National concerning the Zacharias paten, and the failure of Lerner or other representatives of National to disclose the true facts concerning the Zacharias patent, would have the effect of misleading plaintiff and causing it to part with substantial value for an inadequate consideration. Notwithstanding this, defendant Lerner specifically represented to plaintiff, and encouraged other representatives of National to cause plaintiff to believe, that the Zacharias patent was valid and enforceable against third persons, while he knew full well that it was not.

22. In reliance upon the representations of defendant Lerner and the representations and conduct of other representative of National Radio Company, Inc. acting with the knowledge and approval of defendant Lerner, plaintiff entered into the Purchase Agreement for a consideration far in excess of that which the Atomichron Products were worth, was induced into making a total of $450,000.00 in payments thereon to date, and has sustained

additional damages in excess of $500,000.00.

23. Had plaintiff known of the true facts as aforesaid, including the invalidity of the Zacharias patent, it would not have entered into the Purchase Agreement since the principal value to plaintiff of the properties acquired under the Purchase Agreement related to the Zacharias patent and its presumptive validity and enforceability against third parties, and it would not have sustained the additional damages referred to in paragraph 22 hereof.

24. As a result of the frauds and deceptions of defendant Lerner, plaintiff has sustained damages in excess of $1,233,000.00.

FOURTH CAUSE OF ACTION

25. An actual controversy exists, requiring among other things declaratory relief by this Court for the reasons hereinafter set forth.

26. Plaintiff realleges each and every allegation of paragraphs 19 - 25 of the complaint with the same force and effect as if herein set forth at length.

27. Upon information and belief, defendant Lerner purports to be a holder in due course of plaintiff's promissory note in the amount of $325,000.00, referred to in paragraph 4 of this complaint. Said note has a balance due thereunder in the amount of $260,000.00. Defendant Lerner acquired said note from defendant National for other than a valuable consideration, and with full knowledge of the facts alleged in paragraph 4-12 and 22 and 23 of

complaint. A copy of said note is attached hereto as Exhibit 2.

28. As evidenced by the facts set forth, an actual controversy exists between plaintiff and defendant Lerner with respect to the validity and enforceability of the aforesaid promissory note.

29. Under the terms of the said note, there is due and payable to the holder thereof upon February 3, 1972 an installment in the amount of $32,500.00, and in accordance with the terms of the said note, the plaintiff's failure to make said payment or any other payment due thereunder would entitle the holder thereof to accellerate the note and demand immediate payment from plaintiff of the entire balance outstanding.

30. Upon information and belief, defendant Lerner may seek to transfer the aforesaid note to third parties unknown, for value, and may thus seek to create a right in favor of such third parties as holder or holders in due course of the said note, so as to require plaintiff to make continuing payments or be in default thereunder, all to plaintiff's irreparable damage and injury.

31. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment against defendants as follows:

(a) On the first three causes of action herein against defendants National and Lerner jointly and severally in the amount of not less than $1,233,000.00 together with interest

and costs;

(b) On the fourth cause of action herein against defendant Lerner adjudicating and determining that (1) said defendant is not a holder in due course of plaintiff's promissory note, and that said note, as against plaintiff, is void and unenforceable by Lerner; (2) permanently and preliminarily enjoining and restraining said defendant from transferring said note or any part thereof to any persons other than plaintiff and from seeking to enforce said note or any part thereof; and (3) requiring said defendant to return said note to plaintiff for cancellation.

PRYOR, BRAUN, CASHMAN & SHERMAN
Attorneys for Plaintiff
410 Park Avenue
New York, New York 10022

Of Counsel,

MORTON AMSTER, ESQ.
AMSTER & ROTHSTEIN
50 East 42 Street
New York, New York 10017

STATE OF NEW YORK)
:. ss.:
COUNTY OF NASSAU)

MARTIN B. BLOCH, being duly sworn, deposes and says:

That he is the President of FREQUENCY ELECTRONICS, INC., the plaintiff in the within action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters he believes it to be true. That the reason why this verification was made by deponent and not by FREQUENCY ELECTRONICS, INC. is that said plaintiff is a corporation and deponent is an agent of said corporation, to wit: President; that the grounds of deponent's knowledge and the sources of his information are the matters which have come before him in his official capacity as President of said corporation, and matters which he knows personally.

Martin B. Bloch
MARTIN B. BLOCH

Sworn to before me this
21st day of January 1972.

Gertrude Bessel

GERTRUDE BESSEL
NOTARY PUBLIC, State of New York
NO. 41-0275515 Queens County
March 30, 19__

Notary Public

PURCHASE AND SALE AGREEMENT

this 3rd day of January, 1964

This Agreement made ~~as of the 30th day of December, 1963~~ between National Radio Company, Inc., a Massachusetts corporation, hereinafter called "NRCI" and Frequency Electronics, Inc., a Delaware corporation, hereinafter called "FEI",

Whereas, FEI desires to purchase the Atomichron product line of NRCI, as more fully set forth below, and

Whereas, NRCI desires to sell said product line upon terms and conditions hereinafter set forth,

It is agreed as follows:

1. Property Conveyed: For the purposes of this agreement, the term "Atomichron" shall mean a cesium-beam frequency standard, including without limitation all electronic assemblies, sub-assemblies and appurtenances thereto, ~~insofar as the same are used in a cesium-beam frequency standard.~~

As used herein, the term "Atomichron product line and related inventory, machinery and equipment" shall consist of all of those items, #1 through 85, listed on Exhibit "A" hereto attached and made a part hereof. "Data" shall be items #86, 87 and 88 on said Exhibit "A".

FEI hereby agrees to purchase, and NRCI hereby agrees to sell to FEI all its (NRCI's) right, title and interest in and to the Atomichron "product line", and related inventory, machinery and equipment. In addition, NRCI hereby agrees to convey all data, associated with said product line, and all its right, title and interest in and to all patents and trademark(s) or tradename(s) used by NRCI in connection with the production of Atomichrons. FEI agrees that it shall and it hereby does grant to NRCI the unqualified license and right to use patent No. 2,883,540 (Grant), subject only to the limitation on manufacture and sale of Atomichrons herein set forth, such license to be non-exclusive, worldwide and without any obligation to FEI for any royalty or expense. Said patents, trademark(s) and tradename(s) are listed on Exhibit "B" hereto attached and made a part hereof, and NRCI hereby represents that the foregoing is a complete list of patents, trademark and tradename used by NRCI in connection with the Atomichron product line.

Nothing herein shall be deemed to diminish or lessen the rights of NRCI with regard to performance of Government contracts to such an extent that NRCI is not able to compete upon at least equal terms for such contracts with any other company not subject to this agreement, except that in no event will NRCI compete with FEI regarding such contracts if such contracts provide primarily for construction of the Atomichron.

Nothing herein shall be construed to limit the rights of FEI against any third party, including without limitation the government of the United States of America, with regard to claims for infringement of the patents conveyed hereunder.

2. Necessary Documents (Security Interest of NRCI). NRCI further agrees to execute such other documents or assignments as may be reasonably necessary to grant and/or confirm to FEI the use and/or ownership of the items here involved.

EXHIBIT 1

FEI agrees to execute such other documents as may be reasonably necessary to effectuate the purposes of this agreement. As security for payment of the promissory notes to be given by FEI hereunder, FEI hereby agrees that NRCI shall retain and/or be granted a security interest in the Atomichron product line as above defined, and the items of data and patents associated with said product line. FEI agrees to execute such instruments, including without limitation a security agreement and financing statement(s) as are necessary under the Uniform Commercial Code in the appropriate jurisdiction(s) wherein such security interest must be perfected, and to permit or enable NRCI to take any other necessary steps to perfect said security interest.

3. Purchase Price(s). The purchase price(s) for the various items conveyed hereunder is as follows; the said items being identified by classification on Exhibit "A"

(a) Inventory ~~(i.e., Items 1 through 19, 22, 26 through 30, 58, 76, 77 and 79 through 85 on Exhibit A and Data (i.e., Items #86, 87 and 88 on Exhibit A)~~; $250,000

(b) Machines and equipment ~~(i.e., Items #20, 21, 23, 24, 25, 31 through 52, 71, 75 and 78 on Exhibit A)~~; $158,000

(c) ~~Product development, know-how~~, data ~~goodwill~~ and patents; $325,000

4. Method of Payment. The purchase price(s) hereunder shall be computed and payable as follows:

(a) $208,000 in cash or certified check upon execution and $200,000 by promissory note in the form hereto attached as Exhibit "C" and made a part hereof;

(b) $325,000 by promissory note payable in ten (10) equal annual installments in the form hereto attached as Exhibit "D" and made a part hereof.

(c) During such time as there is an unpaid balance outstanding under either or both of the promissory notes referred to above i.e., Exhibits "C" and "D", FEI will furnish to NRCI at such time as the same is made available to the stockholders of FEI a copy of the Annual Report of FEI containing the certified financial statement(s) of FEI for each respective fiscal year, the first such report to be for the fiscal year ending April 30, 1969.

5. Title to be Conveyed - (Warranty). All items of inventory and machinery and data, including without limitation, items #1 through 98 on Exhibit A hereto attached are conveyed "as is", F.O.B. NRCI's plant in Melrose, Massachusetts. FEI acknowledges and agrees that it has viewed such items through its employees and agents. Said items shall be conveyed by Bill of Sale in form hereto attached as Exhibit "E".

Patents shall be conveyed by assignment in the form hereto attached as Exhibit "F". The Trademark and Tradename ~~and goodwill associated therewith~~ which are to be conveyed hereunder shall be conveyed by assignment in the form hereto attached as Exhibit "G". REI KWC

NRCI warrants that it has full legal title to the items conveyed hereunder, and that it has the right and authority to convey the same. No other warranties are made in connection herewith, whether express or implied.

6. Royalty. (a) FEI hereby agrees to pay NRCI a royalty based upon annual "net sales" of the Atomichron, said royalty to be five percent (5%) of the amount of such annual "net sales" in excess of Six Hundred Fifty Thousand Dollars ($650,000.00).

As used herein, the term "net sales of the Atomichron" shall be defined and determined in accordance with generally accepted accounting principles prevailing in the electronics industry, and shall also include, without limitation of the foregoing generality, any and all lease or rental income of FEI from Atomichron. REI KWC

Said royalty shall be payable for a period not exceeding ten (10) years beginning January 31, 1969 and ending ~~December 31, 1978~~ January 30, 1979, provided that in no event shall royalties payable to NRCI during said ten (10) year period exceed the sum of One Hundred Fifty Thousand Dollars ($150,000.00). REI KWC

(b) In addition, for a period of ten (10) years beginning January 31, 1979 and ending ~~December 31, 1988~~ January 30, 1989, FEI shall pay to NRCI a royalty equal to one percent (1%) of annual "net sales" as hereinabove defined, such royalty to be subject to no limitation of amount(s) payable thereunder. REI KWC

(c) Royalty(s) payable under this section 6, both under sub-sections (a) and (b) next preceding, shall be determined annually, beginning April 30, 1970 for the preceding fiscal year, except that such determination on April 30, 1970 shall include the entire period from ~~closing~~ execution hereunder through said April 30, 1970. On or before July 31, 1970, and annually thereafter, on or before the thirty-first (31st) day of July, FEI shall pay over to NRCI the royalty(s) determined and payable hereunder.

FEI shall, simultaneously with royalty payments hereunder, deliver to NRCI a certificate in support of such payment signed by an independent certified public accountant, which certificate shall state the net sales as hereinabove defined of FEI, from its activities hereunder, and show the basis of computation of royalty for the royalty payment concerning which or in support of which such certificate is delivered.

At its option, NRCI shall, upon written notice to FEI given within thirty (30) days after receipt of the certificate of the net sales, as hereinabove defined, from FEI (or if such certificate is not delivered on or before July 31 annually as aforesaid), have the right at its (NRCI's) expense to appoint an independent certified public accountant (or firm thereof), hereinafter called "auditor", which auditor shall have the right at all times during reasonable business hours, to enter into the premises of FEI and examine its books and records relative to Atomichrons for compliance herewith, provided that such auditor shall report to NRCI only as to net sales of the Atomichron and no other matter(s) not of public record.

(d) In the event of any conveyance, license, sub-license, lease or rental by FEI to a "third-party" as hereinafter defined, the net sales of Atomichrons of such third-party shall be deemed to be, and treated as though such sales were the sales of FEI for purposes of computing royalty(s) hereunder.

As used herein, the term "third-party" shall mean a subsidiary corporation of FEI (i.e., a corporation in which FEI owns more than fifty percent (50%)

of the voting stock), or any partnership, joint venture, corporation or other entity of which or in which FEI, directly or indirectly, is a stockholder, partner, joint venturer, "controlling person" within the meaning of the Securities Act of 1933, or in which it (FEI) has a substantial beneficial interest; A license to any party other than a third party as above defined shall not be deemed to be a joint venture or partnership. RE KM

7. Assumotion of Contractual Obligations. FEI hereby agrees to assume any and all obligations of NRCI arising subsequent to closing under a certain contract between NRCI and Gordon Engineering Corporation (the "Gordon Engineering Agreement") made on or about March 5, 1964 and under a certain agreement between NRCI and a certain J. R. Zacharias on or about July 1, 1954 and amended on or about June 1, 1962, (said agreement dated July 1, 1954 and the said amendment thereto being hereinafter collectively called the "Zacharias Agreement"). RE KM

FEI hereby acknowledges that it has received copies of the said Gordon Engineering Agreement and the Zacharias Agreement, and FEI hereby agrees to indemnify and hold harmless NRCI from any and all claims arising under the Gordon Engineering Agreement and/or the Zacharias Agreement as to matters arising subsequent to closing hereunder relating to royalties payable hereunder. RE KM

8. NRCI Causes of Action. NRCI hereby agrees to assign to FEI any and all causes of action presently accrued in its favor or pending in relation to the Atomichron product line, including without limitation, causes of action for patent infringement, if any, provided that FEI hereby agrees that it assumes all risk and expense of such litigation and further provided that any net proceeds after reasonable expenses, including without limitation reasonable attorneys fees, shall be shared equally between FEI and NRCI. NRCI will use its best efforts to have and/or to cause its attorneys and/or agents to deliver any correspondence or records of such causes of action to FEI.

9. Closing. Closing hereunder shall take place at the offices of NRCI at 11:00 AM, January 31, 1969, unless otherwise agreed in writing by the parties. RE KM

10. Survival of Covenants. The covenants of this agreement, including without limitation the provisions hereof requiring the making of reports, payments and similar acts, shall be deemed to survive the ~~closing~~ execution of this agreement, and shall not be merged into any conveyance(s) hereunder.

11. Legal and Equitable Remedies. In view of the unique nature of the items here involved, it is agreed that in the event of a breach of this contract prior to closing, or the failure of either party to appear or complete this transaction at closing, either party may seek, and shall be entitled to obtain specific performance of this agreement from or in any court of competent jurisdiction.

The foregoing right to specific performance is in addition to and not in limitation of the respective rights of the parties hereto to any and all other legal or equitable remedies which are or might become available to them. The parties shall have the right to exercise any and all of their respective legal and/or equitable rights and remedies hereunder, concurrently or successively, without being deemed to have made an election of remedies hereunder, ~~except that neither party shall sue for specific performance as hereinabove permitted, and also have the right to bring a suit for breach of contract or vice versa. The provisions of this section shall also be applicable, without limitation, to any and all obligations of the parties hereto which survive closing hereunder as above provided.~~

A waiver of any right, privilege or default on one occasion shall not be deemed to be a waiver on any other such occasion.

12. Notices. Any and all communications and notices under this agreement shall be in writing and given by registered or certified mail, with postage prepaid, at the following address:

If to NRCI - 111 Washington Street
Melrose, Mass. 02176
Attn: Frank F. Oddi, President

If to FEI - 3 Delaware Drive
New Hyde Park, New York 11040
Attn: Martin Bloch, President

BEST COPY AVAILABLE

The address set forth above for either party may be changed by such party through written notice given to the other party as herein provided.

13. Assignment. This agreement shall not be assignable by either party without the written consent of the other party, which consent shall not be unreasonably withheld, provided that nothing herein shall be construed to prevent NRCI from assigning or otherwise conveying for value either or both of the promissory notes and/or the Security Agreement executed in connection herewith. (See Addendo RSH KWL

14. Brokerage. It is agreed that neither party has used the services of a broker or "finder" in connection herewith, and each party hereby agrees to indemnify and hold harmless the other party against the claims of any person claiming by or through it for a brokerage or finder's fee in connection herewith, except:

> a claim by a certain Gideon Cashman, which claim is subject to and conditional upon a successful ~~closing under~~ completion of this agreement, and which claim shall be settled by NRCI at or immediately after closing in accordance with a separate agreement between NRCI and said Gideon Cashman.

RSH KWL

15. Parol Evidence. This agreement supersedes all prior understandings of the parties, and may not be modified or amended in any respect except by an instrument in writing, executed subsequent to the date hereof, signed in behalf of NRCI by the President or Vice President of NRCI, and by an officer of FEI.

16. Governing Law. This agreement shall be governed in all respects by the laws of the State of Massachusetts.

17. General (Captions. Syntax. Time/Essence). The captions at the beginning of the sections or sub-sections of this agreement are intended only for the convenience of the parties, and shall not be deemed to affect the meaning or interpretation of any of such sections or of this agreement.

Where the context hereof so requires, the singular shall be deemed to include the plural and/or vice versa.

7(a)

ADDENDA - Clause #13 "Atomichron" Purchase and Sale Agreement:

"Notwithstanding the foregoing, either party may assign this agreement in connection with a merger, an acquisition of substantially all of the assets of either party, or a similar transaction, provided that the surviving corporation or the party acquiring such assets of either party or otherwise succeeding to the business of such party shall be financially responsible and shall assume in writing the obligations of such party under this agreement."

Time is of the essence for the giving of any and all notices hereunder, and for the performance of any and all acts unless otherwise excused by virtue of the provisions hereof. However no party shall be deemed in default unless or until the a default shall have continued unremedied for a period of fifteen(15) days. RSH KHL

18. Non-Qualification: Non-Agency. FEI agrees that it shall commit no act or make any representation which would require NRCI to qualify to do business in any state where it is not now so qualified.

Nothing herein shall be construed to constitute FEI as a joint venturer, partner or agent of NRCI.

19. Corporate Action (Special Representations). ~~This agreement is subject to the approval of the Board(s) of Directors of NRCI and FEI. At closing, it is agreed that~~ FEI ~~shall~~ has provided to NRCI an opinion of counsel certifying that FEI has the legal power to complete the within transaction, and certifying to such other matters of corporate action and good standing as NRCI may reasonably require. RSH KHL

~~At closing~~ NRCI ~~shall~~ has provided to FEI an opinion of counsel certifying that NRCI has the legal power to complete the within transaction, and certifying to such other matters of corporate action and good standing as FEI may reasonably require. RSH

NRCI hereby represents to FEI that there are no claims for patent infringement and no liens or encumbrances on the property conveyed hereunder, and that the consummation of this transaction will not violate the provisions of any loan agreement or other contract to which NRCI is a party. FEI hereby represents to NRCI that the consummation of this transaction will not violate the provisions of any loan agreement or other contract to which FEI is a party.

20. Non-Competition. NRCI agrees that it will not now or hereafter manufacture or sell the Atomichron for a period of ~~ten~~ twenty (20) years from the date of this agreement, nor will NRCI engage in such activity directly or indirectly ~~whether as a sole proprietor, partner, joint venturer, or through a subsidiary corporation (i.e., a corporation in~~ RSH KHL

However, NRCI shall not be prohibited from using Atomichrons purchased from others in systems applications.

which NRCI owns fifty percent (50%) or more of the voting stock), during said ten (20) year period, except as to systems applications as permitted by and subject to the conditions of Section 1 above.

IN WITNESS WHEREOF, the parties hereto set their hands this 3rd day of ~~January~~ February, 1969.

NATIONAL RADIO COMPANY, INC.

Attest: _____ By Ray E Horner
Executive Vice-President.

FREQUENCY ELECTRONICS, INC.

Attest: _____ By Kent M. Klueman
Secretary

BEST COPY AVAILABLE

EXHIBIT A attached to Atomichron Purchase and Sale Agreement

INVENTORY OF COMPONENTS, EQUIPMENTS, RAW MATERIAL AND DOCUMENTATION RELATED TO ATOMICHRON

ITEM	QUAN.	CLASS *	DESCRIPTION
1	7	i	NC 3501 Atomichrons
2	8	i	NC 6201-G3 B.T. complete
3	2	i	NC 1500 B.T. test beds, (NRCI built)
4	2	i	NC 1601 Atomichron carcasses
5	1	i	NC 1501 Atomichron carcass
6	3	i	NC 1001 N.T. complete
7	2	i	NC 2001 B.T. complete
8	1	i	NC 1601 B.T. complete
9	6	i	NC 2001 Atomichron carcasses
10	1	d	NC 3601 Mock-up
11	1	d	NC 3501 Engineering carcass
12	5	i	NC 3701 Pilot run Atomichrons
13	1	d	GEC (NC 3701) Engineering model Atomichron
14	20	i	NC 3701 Atomichrons (unassembled)
15	1	eq	Engineering model F.M. test set
16	5	i	NC 1001 B.T. envelopes
17	3	i	NC 2001 B.T. envelopes
18	5	i	NC 1601 B.T. envelopes
19	4	d	NC 1001 Atomichron carcasses
20	2	eq	NC 6201 Alignment jigs
21	2	eq	NC 6201 B.T. waveguide brazing jigs
22	6	i	NC 6201 B.T. envelopes
23	1	d	P.E.M. Life test beam tube with power supply
24	4	eq	Engineering pump stands (incomplete)
25	2	d	Preproduction type P.E.M. B.T. 1963 17"

ITEM	QUAN.	CLASS	DESCRIPTION
26	1	d	17" Single cavity B.T. 1960
27	1	d	A.S.D. Prototype 1962
28	1	d	P.E.M. Prototype 1962
29	1	d	Missle born prototype 1958
30	1	d	Single cavity economy 17" 1959
31	1	eq	Phase-lock Klystron waveguide test jig
32	2	eq	LFE Model 814 ultra-stable microwave oscillator
33	1	eq	Waveguide measuring set (compl. with jigs, stubs, etc.)
34	1	eq	Impulse Magnetizer #7-59 (NRCl built)
35	1	eq	Vacuum molding processing stand
36	1	eq	Leeds & Northrop potentiometer #8691
37	2	eq	Welch vacuum fore-pump
38	2	eq	Bake-out ovens (complete with controls & pump stands)
39	2	eq	Hydrogen purifiers
40	1	eq	Combustible gas alarm, type EX-S
41	2	eq	Controlled atmosphere radiation brazing stands (complete with power supply)
42	2	eq	CVC leak detectors (with repair kits)
43	12	eq	B.T. test power supplies (NRCI built)
44	5	eq	Electron multiplier high voltage supplies
45	7	i	Varian Vac-Ion pump supplies
46	1	eq	Phase lock Klystron R.F. source (NRCI built)
47	1	eq	1MC to 100MC multiplier test jig (NRCI built)
48	2	eq	1MC to 100MC multiplier chassis (NRCI built)
49	2	eq	Plating tanks
50	1	eq	Selectron electroplating power supply
51	1	eq	Bantom Demineralizer
52	1	eq	Boekel hot box
53	1	eq	Dynalabs gaussmeter model D79

ITEM	QUAN.	Class	DESCRIPTION
54	2	eq	Cryogenic refrigerators
55	1	eq	Electron multiplier vacuum processing assembly (complete NRCI built)
56	1	eq	Rawson rotating coil gaussmeter
57	1	eq	Electron multiplier vacuum test stand
58	2	eq	C-Field supplies (NRCI built)
59	1	eq	C-Field degausser (NRCI built)
60	1	eq	2' x 5' Surface plate on stand
61	1	eq	24" height gauge
62	1	eq	12" height gauge
63	1	eq	Black-Hawk pump with pinch-off tool
64	1	eq	Vapor degreaser
65	2	eq	Keithley Electrometers
66	2	eq	S.W.E. R-1 Voltmeters
67	2	eq	S.W.E. R-2 voltmeters
68	1	eq	Parzen comparator
69	1	eq	Tracor V.L.F. receiver with antenna
70	1	eq	Universal B.T. vacuum apparatus complete with pump & controls
71	1	eq	Lepel induction brazing machine (complete with jigs)
72	1	eq	Electric furnace for hydrogen (compl. with controls and atmospheric control)
73	1 lot	eq	Optical apparatus including monochrometer, lenses, prisms, etc.
74	1	eq	Electron multiplier spotwelder complete with electrodes & power supply
75	1	eq	Heliarc welder complete with electrodes Heliarc Welder complete with electrodes
76	1 lot	d	Raw materials used in Atomichron program research; development and production, including all metals and unfinished parts, chemicals, and plastics.
77	1 lot	i	Finished and/or spare parts and components for beam tubes and electronics.

ITEM	QUANT.	Class	DESCRIPTION
78	1 lot	eq	Test and welding jigs, coil winders, various waveguide parts used in research, development and/or production.
79	52	i	NC 1001/1001A manuals
80	7	i	NC 1201 Manuals
81	21	i	NC 1501/NC1511 Manuals
82	25	i	NC1601 Manuals
83	22	i	NC 1601M Manuals
84	39	i	NC 2001/NC2011 Manuals
85	17	i	NC 3501 Manuals
86	1 lot	d	Blueprints, original drawings, and sketches related to Atomichron program
87	1 lot	d	Physics and chemistry books and magazines, and other library references related to the Atomichron program
88	1 lot	d	Atomichron technical files and memorandums

i = inventory
d = data
eq = equipment

Exhibit B
Attached to "Atomichron" Purchase and Sale Agreement

U.S. Patent No.	Title	Inventor	Date
2,883,540	Microwave Signal Generating System	E. F. Grant	April 21, 1959
2,960,663	Frequency Control Apparatus	W. A. Mainberger	Nov. 15, 1960
2,972,115	Molecular Beam Apparatus	J. R. Zacharias et al	Feb. 14, 1961
2,972,690	Ion Pump and Gauge	A. O. McCoubrey	Feb. 21, 1961
2,991,389	Cesium Ovens	E. F. Grant et al	July 4, 1961
2,994,836	Molecular Beam Apparatus	J. H. Holloway	Aug. 1, 1961
3,005,121	Beam Intensity Control System	J. George	Oct. 17, 1961
3,021,491	Frequency Control Apparatus for an Atomic Beam Tube	A. Orenberg	Feb. 13, 1962
3,034,078	Temperature Compensated Microwave Cavity	A. O. McCoubrey	May 8, 1962
3,042,878	Frequency Control Apparatus for an Atomic Beam Tube	A. Orenberg	July 3, 1962
3,058,023	Molecular Beam Source	J. George	Oct. 9, 1962
3,060,384	Molecular Beam Frequency Standard Incorporating Control of Static Field	A. O. McCoubrey	Oct. 23, 1962
3,060,385	Carbon-Monoxide Frequency Standard	F. W. Lipps, Jr. et al	Oct. 23, 1962
3,076,942	Molecular Beam Frequency Standard	J. H. Holloway et al	Feb. 5, 1963
3,080,519	Nuclear Maser	A. O. McCoubrey et al	March 5, 1963

U.S. Patent No.	Title	Inventor	Date
3,088,078	Frequency Control Apparatus for an Atomic Beam Tube	E. F. Grant et al	April 30, 1963
3,258,713	Cesium Beam Tube with Niobium Ionizer	J. George	June 28, 1966
3,305,290	Molecular Beam Cesium Getter	A. Ganssen et al	Feb. 21, 1967
3,328,633	Molecular Beam Tube	J. George	June 27, 1967

U.S. Trademark No.	Name	Date
653,065	"Atomichron"	Oct. 15, 1957

Tradename: Atomichron

Exhibit "C"

PROMISSORY NOTE

$200,000.00

Melrose, Mass.
February 3, 1969

For Value Received,

Frequency Electronics, Inc., a Delaware corporation, hereby promises to pay to the order of:

National Radio Company, Inc.

at its office, 111 Washington Street, Melrose, Massachusetts, or such other place as the holder hereof shall designate in writing,

the sum of: Two Hundred Thousand ($200,000) Dollars

such payment to be made on or before August 3, 1970.

This note shall bear no interest prior to maturity but shall bear interest thereafter at the rate of 1% per month on principal balances from time to time outstanding.

Upon the default in the payment of any sum becoming due hereunder, or any other default under this Note or in the performance and observance of the provisions of any mortgage, security agreement, credit agreement, or other agreement pertaining thereto, then all remaining unpaid installments of said principal sum and any unpaid parts thereof shall, at the option of the legal holder hereof, become immediately due and payable without further demand or notice, the undersigned hereby, jointly and severally, waiving such demand or notice, as well as demand, protest, presentment for payment, and notice of non-payment and protest, and also waiving any and all defenses on the ground of any extensions or partial payments with respect to any installments or parts thereof which may be granted or accepted by the legal holder hereof from any of them, with or without the knowledge or consent of any other, before or after maturity.

At the option of the holder, this Note also shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events: If the undersigned corporation, is liquidated, terminated or dissolved, or, if any party liable hereon, whether as maker, indorser, guarantor, surety or otherwise shall make an assignment for benefit of creditors, or if a receiver of any such party's property shall be appointed, or if a petition in bankruptcy or other similar proceeding under any law for relief of debtors shall be filed by or against any such party.

If this Note is placed in the hands of an attorney for collection, the undersigned, jointly and severally, agree to pay all costs and expenses incident thereto including reasonable attorney fees.

Without affecting the negotiability of this instrument, the undersigned, jointly and severally, if, and to the fullest extent, permitted by law, hereby also waive trial by jury of any and all issues which may be raised in any law suit, which may be brought hereafter against the undersigned, based upon or arising out of any claim of default in payment of this Note.

This instrument shall take effect as a sealed instrument and shall be governed by the laws of the Commonwealth of Massachusetts.

In Witness Whereof, and intending to be legally bound, the undersigned hereto sets its hand and seal.

FREQUENCY ELECTRONICS, INC.

By_____
hereunto duly
authorized

Exhibit "D"

PROMISSORY NOTE

$325,000.00

Melrose, Mass.
February 3, 1969

For Value Received,

Frequency Electronics, Inc., a Delaware corporation, hereby promises to pay to the order of National Radio Company, Inc., at its offices, 111 Washington Street, Melrose, Massachusetts, or such other place as the holder hereof shall designate in writing.

the sum of: Three Hundred Twenty-Five Thousand ($325,000) Dollars, payable in ten (10) equal annual installments beginning February 3, 1970, and annually on the 3rd day of February thereafter until the entire balance hereunder has been paid, such balance to be paid in any event in or within ten (10) years from the date hereof.

This note shall bear no interest prior to maturity but shall bear interest in the event of default in the payment of any installment due hereunder at the rate of 1% per month on principal balances from time to time outstanding until such overdue installment(s) is paid.

Upon the default in the payment of any sum becoming due hereunder, or any other default under this Note or in the performance and observance of the provisions of any mortgage, security agreement, credit agreement, or other agreement pertaining thereto, then all remaining unpaid installments of said principal sum and any unpaid parts thereof shall, at the option of the legal holder hereof, become immediately due and payable without further demand or notice, the undersigned hereby, jointly and severally, waiving such demand or notice, as well as demand, protest, presentment for payment, and notice of non-payment and protest, and also waiving any and all defenses on the ground of any extensions or partial payments with respect to any installments or parts thereof which may be granted or accepted by the legal holder hereof from any of them, with or without the knowledge or consent of any other, before or after maturity.

At the option of the holder, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events: If the undersigned corporation is liquidated, terminated or dissolved, or, if any party liable hereon, whether as maker, indorser, guarantor, surety or otherwise shall make an assignment for benefit of creditors, or if a receiver of any such party's property shall be appointed, or if a petition in bankruptcy or other similar proceeding under any law for relief of debtors shall be filed by or against any such party.

If this Note is placed in the hands of an attorney for collection, the undersigned, jointly and severally, agree to pay all costs and expenses incident thereto including reasonable attorney fees.

Without affecting the negotiability of this instrument, the undersigned, jointly and severally, if, and to the fullest extent, permitted by law, hereby also waive trial by jury of any and all issues which may be raised in any law suit, which may be brought hereafter against the undersigned, based upon or arising out of any claim of default in payment of this Note or any installment thereof.

This instrument shall take effect as a sealed instrument and shall be governed by the laws of the Commonwealth of Massachusetts.

In Witness Whereof, and intending to be legally bound, the undersigned hereto sets its hand and seal.

FREQUENCY ELECTRONICS, INC.

By_____
hereunto duly
authorized

Exhibit "E" attached to Atomichron Purchase and Sale Agreement

BILL OF SALE PERSONAL PROPERTY 309

RE
pencil

Know all Men by these presents

that National Radio Company, Inc. ("NRCI"), a Massachusetts corporation, of Melrose, Massachusetts,

in consideration of One Dollar and other good and valuable consideration

paid by Frequency Electronics, Inc ("FEI"), a [illegible] corporation, of New Hyde Park, New York,

the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer, and deliver unto the said FEI, as is, F.O.B., Melrose, Massachusetts the following goods and chattels, namely:

See list attached as Exhibit A

Exhibit "F" attached to chron Purchase and Sale Agr :

ASSIGNMENT OF PATENTS

WHEREAS, National Radio Company, Inc., a Massachusetts corporation having its principal office at 111 Washington Street, Melrose, Massachusetts has obtained, used and is using certain patents which are registered with the United States Patent Office, and bear the registration numbers and dates on the list hereto attached, and

WHEREAS, Frequency Electronics, Inc., a Delaware corporation having its office at 3 Delaware Drive, New Hyde Park, New York, is desirous of acquiring said patents and the inventions claimed therein together with the know-how associated therewith,

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, said National Radio Company, Inc. hereby assigns to said Frequency Electronics, Inc. all right, title and interest in and to the patents and inventions claimed therein together with the know-how associated therewith, said patents bearing the following registration numbers and dates (as registered in the United States Patent Office):

See List of Patents attached hereto
and incorporated herein by reference.

Notice is hereby given that the said patents assigned hereunder are subject to a security interest in favor of said National Radio Company, Inc. under the Uniform Commercial Code.

IN WITNESS WHEREOF, National Radio Company, Inc. hereto sets its hand and seal this day of January, 1969.

NATIONAL RADIO COMPANY, INC.

By _____

Commonwealth of Massachusetts)
Middlesex County) ss

On this day of January, 1969, before me personally came to me known, who being by me duly sworn, did depose and say that he is the of National Radio Company, Inc., the company described as the assignor in the foregoing assignment; that as such he executed said assignment for and on behalf of said company and that he was duly authorized so to do.

_____
Notary Public
My commission expires June 21, 1969.

"List" attached to ASSIGNMENT OF PATENTS, National Radio Company, Inc. to Frequency Electronics, Inc.

U.S. Patent No.	Title	Inventor	Date
2,883,540	Microwave Signal Generating System	E. F. Grant	April 21, 1959
2,960,663	Frequency Control Apparatus	W. A. Mainberger	Nov. 15, 1960
2,972,115	Molecular Beam Apparatus	J. R. Zacharias et al	Feb. 14, 1961
2,972,690	Ion Pump and Gauge	A. O. McCoubrey	Feb. 21, 1961
2,991,389	Cesium Ovens	E. F. Grant et al	July 4, 1961
2,994,836	Molecular Beam Apparatus	J. H. Holloway	Aug. 1, 1961
3,005,121	Beam Intensity Control System	J. George	Oct. 17, 1961
3,021,491	Frequency Control Apparatus for an Atomic Beam Tube	A. Orenberg	Feb. 13, 1962
3,034,078	Temperature Compensated Microwave Cavity	A. O. McCoubrey	May 8, 1962
3,042,878	Frequency Control Apparatus for an Atomic Beam Tube	A. Orenberg	July 3, 1962
3,058,023	Molecular Beam Source	J. George	Oct. 9, 1962
3,060,384	Molecular Beam Frequency Standard Incorporating Control of Static Field	A. O. McCoubrey	Oct. 23, 1962
3,060,385	Carbon-Monoxide Frequency Standard	F. W. Lipps, Jr. et al	Oct. 23, 1962
3,076,942	Molecular Beam Frequency Standard	J. H. Holloway et al	Feb. 5, 1963
3,080,519	Nuclear Maser	A. O. McCoubrey et al	March 5, 1963
3,083,078	Frequency Control Apparatus for an Atomic Beam Tube	E. F. Grant et al	April 30, 1963
3,258,713	Cesium Beam Tube with Niobium Ionizer	J. George	June 28, 1966
3,305,290	Molecular Beam Cesium Getter	A. Ganssen et al	Feb. 21, 1967
3,323,633	Molecular Beam Tube	J. George	June 27, 1967

BEST COPY AVAILABLE

Exhibit "G" attached to Atomichron Purchase and Sale Agreement

K 94
Exhibit

ASSIGNMENT OF TRADEMARK

Whereas, National Radio Company, Inc. a Massachusetts corporation, having its principal office at 111 Washington Street, Melrose, Massachusetts, has adopted, used and is using a certain trademark which is registered in the United States Patent Office, Registration #653,065, dated October 15, 1957, and

Whereas, Frequency Electronics, Inc., a Delaware corporation, having its office at 3 Delaware Drive, New Hyde Park, New York, is desirous of acquiring said trademark and the registration thereof,

Now Therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, said National Radio Company, Inc. hereby assigns unto the said Frequency Electronics, Inc. all right, title and interest in and to the said trademark, together with the goodwill of the business symbolized by the trademark and the registration thereof, #653,065.

Notice is hereby given that the said trademark assigned hereunder is subject to a security interest in favor of said National Radio Company, Inc. under the Uniform Commercial Code.

In addition and not in limitation of the foregoing, National Radio Company, Inc. hereby assigns all its right, title and interest in and to the tradename "Atomichron" to said Frequency Electronics, Inc., said tradename to be subject to the aforesaid security interest.

In Witness Whereof, National Radio Company, Inc. hereto sets its hand and seal this day of January, 1969.

NATIONAL RADIO COMPANY, INC.

By_____

Commonwealth of Massachusetts)
: SS
Middlesex County)

On this day of January, 1969, before me personally came to me known, who being by me duly sworn, did depose and say that he is the the company described as the assignor in the foregoing assignment; that as such he executed said assignment for and on behalf of said company and that he was duly authorized so to do.

_____
Notary Public
My commission expires:

PROMISSORY NOTE

$325,000.00

Melrose, Mass.
February 3, 1969

For Value Received,

Frequency Electronics, Inc., a Delaware corporation, hereby promises to pay to the order of National Radio Company, Inc., at its offices, 111 Washington Street, Melrose, Massachusetts, or such other place as the holder hereof shall designate in writing.

the sum of: Three Hundred Twenty-Five Thousand ($325,000) Dollars, payable in ten (10) equal annual installments beginning February 3, 1970, and annually on the 3rd day of February thereafter until the entire balance hereunder has been paid, such balance to be paid in any event in or within ten (10) years from the date hereof.

This note shall bear no interest prior to maturity but shall bear interest in the event of default in the payment of any installment due hereunder at the rate of 1% per month on principal balances from time to time outstanding until such overdue installment(s) is paid.

Upon the default in the payment of any sum becoming due hereunder, or any other default under this Note or in the performance and observance of the provisions of any mortgage, security agreement, credit agreement, or other agreement pertaining thereto, then all remaining unpaid installments of said principal sum and any unpaid parts thereof shall, at the option of the legal holder hereof, become immediately due and payable without further demand or notice, the undersigned hereby, jointly and severally, waiving such demand or notice, as well as demand, protest, presentment for payment, and notice of non-payment and protest, and also waiving any and all defenses on the ground of any extensions or partial payments with respect to any installments or parts thereof which may be granted or accepted by the legal holder hereof from any of them, with or without the knowledge or consent of any other, before or after maturity.

At the option of the holder, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events: If the undersigned corporation is liquidated, terminated or dissolved, or, if any party liable hereon, whether as maker, indorser, guarantor, surety or otherwise shall make an assignment for benefit of creditors, or if a receiver of any such party's property shall be appointed, or if a petition in bankruptcy or other similar proceeding under any law for relief of debtors shall be filed by or against any such party.

EXHIBIT 2

If this Note is placed in the hands of an attorney for collection, the undersigned, jointly and severally, agree to pay all costs and expenses incident thereto including reasonable attorney fees.

Without affecting the negotiability of this instrument, the undersigned, jointly and severally, if, and to the fullest extent, permitted by law, hereby also waive trial by jury of any and all issues which may be raised in any law suit, which may be brought hereafter against the undersigned, based upon or arising out of any claim of default in payment of this Note or any installment thereof.

This instrument shall take effect as a sealed instrument and shall be governed by the laws of the Commonwealth of Massachusetts.

In Witness Whereof, and intending to be legally bound, the undersigned hereto sets its hand and seal.

FREQUENCY ELECTRONICS, INC.

By KENT M. KLINEMAN (S)
hereunto duly
authorized

S/E. Whitney Drake, Witness

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF NEW YORK

FREQUENCY ELECTRONICS, INC., Plaintiff, v. NATIONAL RADIO COMPANY, INC. and LOUIS LERNER, Defendants.	Civil Action 72 CIV. 412

ANSWER OF DEFENDANT LOUIS LERNER
TO PLAINTIFF'S VERIFIED COMPLAINT

Defendant Louis Lerner, a/k/a Louis C. Lerner, as and for his answer to the plaintiff's verified complaint originally filed in the Supreme Court of the State of New York, County of New York, under Docket (Index) 1458/72 and removed to this Court by Petition of said defendant Lerner, filed on January 28, 1972, respectfully alleges as follows:

FIRST DEFENSE

1. Admits allegations set forth in paragraph "1." of the Complaint.

2. Admits allegations set forth in paragraph "2." of the Complaint.

3. Upon information and belief admits the allegations set forth in paragraph "3." of the Complaint. And further answering, avers that defendant National Radio Company, Inc., formerly known as National Company, Inc. ("National") on or about August 11, 1970 filed in the United States District Court for the District of Massachusetts a petition stating it intends to propose an

Arrangement pursuant to the provisions of Chapter XI of the Bankruptcy Act, 11 U.S.C. § 701, et seq., which proceeding is now pending before the said Court in Bankruptcy Docket No. 70-1006.

4. Answering paragraph "4." defendant Lerner says that many of the allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that the allegations are directed against defendant Lerner and an answer is required, he, on information and belief, admits that on or about February 3, 1969, plaintiff and National entered into an agreement (the "Purchase Agreement") whereby plaintiff agreed to purchase National's Atomichron Product Line for a purchase price of $733,000, payable in installments over ten (10) years, all as provided in the Purchase Agreement. And further answering, defendant Lerner says that upon information and belief, under date of June 27, 1969, plaintiff and National entered into an Agreement amending or modifying the Purchase Agreement whereby the purchase price was reduced by $23,000 and the aggregate amount due on the $325,000 Note issued by plaintiff on February 3, 1969 (Exhibit 2 to the Complaint) was reduced to $302,000. And further answering, defendant Lerner admits that Exhibit 1 to the Complaint appears to be a copy of the Purchase Agreement. Except as otherwise admitted, upon information and belief, defendant Lerner denies the remaining allegations set forth in paragraph "4." of the Complaint.

5. Answering paragraph "5.", defendant Lerner, upon information and belief, admits and avers that prior to the execution of the Purchase Agreement, National expended substantial sums of money for research and development the result of which was, among other things, the development of a frequency control

apparatus, sometimes known as an atomic clock device, which apparatus was sold by National prior to February 3, 1969, under the trademark "Atomichron." Except as otherwise admitted, upon information and belief, defendant Lerner denies the remaining allegations set forth in paragraph "5." of the Complaint.

6. Answering paragraph "6." defendant Lerner says that many of the allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that the allegations are directed against defendant Lerner and an answer is required, upon information and belief, defendant Lerner states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6." of the Complaint.

7. Answering paragraph "7.", defendant Lerner says that many of the allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that the allegations are directed against defendant Lerner and an answer is required, he states upon information and belief, that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7." of the Complaint.

8. To the extent that paragraph "8." may require an answer by defendant Lerner, he states that he is without knowledge or information sufficient to form a belief as to the truth of the allegation set forth therein.

9. To the extent that paragraph "9." may require an answer by defendant Lerner, he states that he is without knowledge or information sufficient to form a belief as to the truth of the allegation set forth therein.

10. To the extent that paragraph "10." may require an answer by defendant Lerner, he states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

11. Answering paragraph "11.", defendant Lerner says that many of the allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that the allegations are directed against defendant Lerner and an answer is required, he states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

12. Answering paragraph "12.", defendant Lerner says that the allegations set forth therein are the product of speculation and conjecture by the plaintiff and should be stricken from the Complaint, and further answering, defendant Lerner says that such allegations are argumentative and conclusionary and require no answer. To the extent that allegations are directed against defendant Lerner and an answer is required, he states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

13. To the extent that paragraph "13." may require an answer by defendant Lerner, he denies that the plaintiff has suffered any loss or damage as the result of any act or omission by defendant Lerner, and further answering, defendant Lerner states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

14. To the extent that paragraph "14." may require an answer by defendant Lerner, he hereby incorporates by reference his answers as set forth above to paragraphs 1. through 6. of the Complaint.

15. Answering paragraph "15." defendant Lerner says that many of the allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that the allegations are directed against defendant Lerner and an answer is required, upon information and belief, he denies that the Purchase Agreement expressly warranted to the plaintiff that National had "good title" to the Zacharias Patent. Except as otherwise denied, and further answering paragraph "15." defendant Lerner states that he is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

16. To the extent that paragraph 16." may require an answer by defendant Lerner, he states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

17. Answering paragraph "17." of the Complaint, defendant Lerner denies that the plaintiff has suffered any loss or damage as the result of any act or omission by defendant Lerner. And further answering, defendant Lerner states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

18. To the extent that paragraph "18." may require an answer by defendant Lerner, he hereby incorporates by reference his answers as set forth above to paragraphs 1. and 2. of the Complaint.

19. Admits that at all relevant times referred to in the Complaint defendant Lerner, a/k/a Louis C. Lerner, was a Director and Shareholder of National. Except as otherwise admitted defendant Lerner denies the remaining allegations set forth in paragraph "19." of the Complaint.

20. To the extent that paragraph "20." may require an answer by defendant Lerner, he hereby incorporates by reference his answers as set forth above to paragraphs 3. through 8. of the Complaint.

21. Denies that "defendant Lerner participated in the negotiations with the plaintiff leading to the sale of the Atomichron Product Line and the execution of the Purchase Agreement." Denies he "knew of the facts set forth in paragraph 7. and 8. of the Complaint at that time." Denies that "defendant Lerner specifically represented to plaintiff, and encouraged other representatives of National to cause plaintiff to believe that the Zacharias Patent was valid and enforceable against third persons while he knew full well that it was not." In further answering paragraph "21." of the Complaint, defendant Lerner says that the remaining allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that such allegations require an answer, defendant Lerner denies each and every allegation set forth therein.

22. Answering paragraph "22.", defendant Lerner says that the allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that an answer is required, defendant Lerner states that he is without knowledge or information sufficient to form a believe as to the truth of the allegations set forth therein.

23. Answering paragraph "23." of the Complaint, defendant Lerner says that the allegations set forth therein are the result of speculation and conjecture by the plaintiff, that such allegations are argumentative and conclusionary and require no answer. To the extent that the allegations are directed against defendant Lerner and an answer is required, he states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

24. Answering paragraph "24." of the Complaint, defendant Lerner says that the allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that an answer is required, he denies any act of fraud or deception. Further answering, defendant Lerner denies that the plaintiff has suffered any loss or damage as the result of any act or omission by defendant Lerner. Except as otherwise denied, defendant Lerner states that he is without knowledge of information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph "24." of the Complaint.

25. Defendant Lerner denies the allegations set forth in paragraph "25." of the Complaint.

26. To the extent that paragraph "26." may require an answer by defendant Lerner, he hereby incorporates by reference his answers as set forth above to paragraphs 19. through 25. of the Complaint.

27. Answering paragraph "27." of the Complaint, defendant Lerner avers that he is a holder in due course of the plaintiff's Promissory Note in the original face amount of $325,000 referred to in paragraph 4. of the Complaint, admits that said Note on January 24, 1972, the date of the commencement of this action against defendant Lerner in the Supreme Court of the State of New York, said unpaid balance due thereon was in the amount of $260,000 and further defendant Lerner avers that the said balance was due and payable in annual installments of $32,500 each, commencing February 3, 1972, through February 3, 1979. Admits that Exhibit 2 to the Complaint appears to be a conformed copy of the said $325,000 Note. Except as otherwise admitted, defendant Lerner denies the remaining allegations set forth in paragraph "27." of the Complaint.

28. Answering paragraph "28." of the Complaint, defendant Lerner avers that plaintiff has refused to make the installment payment of $32,500 due on the said $325,000 Note on the due date of February 3, 1972, admits a controversy exists between plaintiff and defendant Lerner with respect to the validity and enforceability of the said $325,000 Note.

29. Admits the allegations set forth in paragraph "29." of the Complaint.

30. Answering paragraph "30." defendant Lerner says that the allegations set forth therein are argumentative and conclusionary and require no answer. To the extent that an answer is required, defendant Lerner admits that he is the holder and owner of the said $325,000 Note, that said Note has been pledged, prior to the commencement of this action, for value with First Bank and Trust Company of Boca Raton N.A., of Boca Raton, Florida, as collateral for a loan and in so doing he has exercised his rights as owner and holder of the Note in accordance with the terms thereof. Except as otherwise admitted, defendant Lerner states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

31. Denies the allegations set forth in paragraph "31." of the Complaint.

SECOND DEFENSE

32. The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

33. Plaintiff was contributorially negligent by failing to exercise reasonable care in the investigation and evaluation of the patents constituting a part of the assets of National purchased pursuant to and under the Purchase Agreement at or before

the time the plaintiff purchased the assets, sometimes known and referred to as the Atomichron Product Line, and again within a reasonable time thereafter.

FOURTH DEFENSE

34. Plaintiff, through its officers, agents and employees are knowledgeable and sophisticated in the area of engineering and electronics, operates and conducts a business manufacturing electronic devices and equipment, and as such person assumed the risk of loss and damage alleged in its Complaint; plaintiff assumed such risk of loss and damage by electing not to negotiate and pay for a representation and warranty as to the validity of one or more of the patents purchased pursuant to the Purchase Agreement, and further elected not to obtain an opinion or inquire of its patent counsel or of National's patent counsel with respect to the validity of one or more of the nineteen patents purchased by the plaintiff at or prior to the purchase of the Atomichron Product Line.

FIFTH DEFENSE

35. Plaintiff is estopped from asserting reliance upon defendant Lerner, individually, or upon National, with respect to any statements or information supplied to plaintiff at or prior to the purchase of the Atomichron Product Line, because the plaintiff elected to enter into such purchase agreement without seeking a legal opinion from its own patent counsel or from National's patent counsel with respect to the validity of any of the patents purchased by the plaintiff pursuant to and under the Purchase Agreement.

SIXTH DEFENSE

36. Plaintiff has waived its right to bring this action for any loss of damage against defendant Lerner by its failure to exercise reasonable care and prudence in its investigation of

the validity of the patents purchased pursuant to and under the Purchase Agreement, by its election to accept and bargain for a "quit claim" assignment of patent rights without warranties of patent validity and by its failure to seek an opinion from its patent counsel or National's patent counsel with respect to the validity of any one or more of the patents purchased under the Purchase Agreement, and further notwithstanding the opportunities given to the plaintiff to inspect and inquire into the validity of patents relating to the Atomichron Product Line as would be required upon the exercise of ordinary prudence and good judgment.

SEVENTH DEFENSE

37. Defendant Lerner alleges that National is an indispensable party to this action, that plaintiff's claim for relief against defendant Lerner arises out of plaintiff's claim for relief against National and can be asserted against defendant Lerner only after having proved its claim against defendant National. Defendant Lerner avers that at all times material to the matters set forth in the Complaint he made no representation or warranty to the plaintiff with respect to the validity of any patent purchased by the plaintiff pursuant to and under the Purchase Agreement, that if any representations were made, which defendant Lerner specifically denies, such representations were made without his knowledge and further that defendant Lerner had no knowledge or information that the plaintiff would rely upon such alleged representations.

EIGHTH DEFENSE

38. Defendant Lerner avers that he is a holder in due course of the said $325,000 Note, that he has purchased the same for value and without notice of any defense of the plaintiff as maker of said Note to the enforcement thereof in accordance with

its terms, and further defendant Lerner avers that plaintiff knew of defendant Lerner's intention in April of 1970 to purchase the said $325,000 Note and took no action to notify defendant Lerner of the plaintiff's defenses to the enforcement of the said Note as alleged herein whereby plaintiff is estopped from asserting the same against defendant Lerner.

NINTH DEFENSE

39. On or about August 11, 1970, National, the defendant herein, filed with the United States District Court for the District of Massachusetts, a petition stating that it intends to propose an Arrangement pursuant to the provisions of Chapter XI of the Bankruptcy Act, which proceedings are now pending in said Court under Bankruptcy Docket No. 70-1006 and pursuant to and in accordance with the policy of the Bankruptcy Act, 11 U.S.C. § 701, et seq., all claims against said National Company are to be adjudicated in the said Bankruptcy Court, and that the proper forum for the adjudication of the issues raised by the plaintiff in its Complaint is the Bankruptcy Court of the District of Massachusetts and accordingly this action should be dismissed or transferred to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. 1404.

TENTH DEFENSE

40. Defendant Lerner alleges that the plaintiff is not the real party in interest as required by Rule 17(a) of the Federal Rules of Civil Procedure.

ELEVENTH DEFENSE

41. This action is barred by the applicable Statutes of Limitations.

WHEREFORE, defendant Louis C. Lerner prays that the Court dissolve the temporary restraining order or the preliminary injunction, as the case may be, now in effect against him, that the Court enter judgment for the defendant Louis Lerner and against the plaintiff, that the plaintiff's Complaint be dismissed as to defendant Lerner and that defendant Lerner be awarded his costs together with such other and further relief as the Court may deem just and equitable.

By his attorney,

Leonard I. Schreiber, Esquire
30 Park Avenue
New York, N.Y. 10016

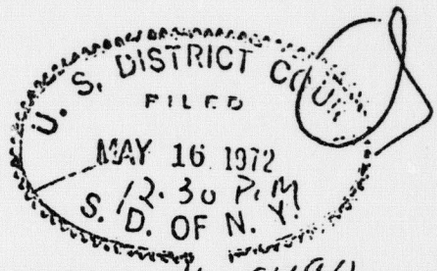
Tel.: [212] 689-1810

Of Counsel:

Edwin J. Carr, Esquire
Rich, May & Bilodeau
One State Street
Boston, Ma. 02109

Tel.: [617] 742-6550

Dated: March 3, 1972



A-35490

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREQUENCY ELECTRONICS, INC.,

Plaintiff,

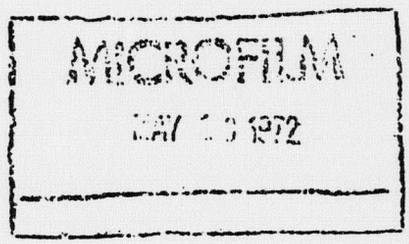
-against-

NATIONAL RADIO COMPANY, INC. and LOUIS LERNER,

Defendants.

72 Civ. 412

OPINION



APPEARANCES:

Pryor, Braun, Cashman & Sherman, New York City, for plaintiff; Sanford M. Goldman, New York City, of counsel.

Leonard I. Schreiber, New York City, for defendant Louis Lerner.

MacMAHON, District Judge.

This is an action for a declaratory judgment that a promissory note made by plaintiff Frequency Electronics, Inc. ("Frequency") is void, and for damages for an alleged breach of warranty and fraudulent misrepresentation in the assignment of a patent. Frequency moves,

pursuant to Rule 65, Fed.R.Civ.P., preliminarily to enjoin defendant Louis Lerner ("Lerner") from endorsing, transferring, negotiating, or enforcing the note, or from obtaining rights of acceleration thereunder pending the outcome of this action.

The action was originally commenced in the Supreme Court of the State of New York and removed to this court by defendants pursuant to 28 U.S.C. § 1446. A temporary restraining order entered by the state court remains in effect under 28 U.S.C. § 1440 pending the outcome of this motion.

The action stems from the purchase, on February 3, 1969, by Frequency of certain assets of defendant National Radio Company, Inc. ("National"), including a patent for a "molecular beam apparatus" or "atomic clock" developed by Dr. Jerrold R. Zacharias. Frequency paid for the assets in part with two promissory notes, one of which, in the face amount of $325,000, is the subject of this motion. The note was subsequently acquired by defendant Lerner, a former director and principal shareholder of National, who, claiming to be a holder in due course, is asserting his right to an

installment payment of $32,000 due on February 3, 1972. The note provides that in the event of a default the entire unpaid balance, currently $260,000, is immediately due and payable.

Frequency asserts two claims against National and Lerner, the first to declare the note void for lack of consideration on the ground that the patent for which it was given is invalid, and the second for damages on the ground that National breached its warranty of title and that, together with Lerner, fraudulently misrepresented the patent's validity. Frequency moves for a preliminary injunction on the first claim, staying Lerner from transferring the note to a holder in due course, in order to preserve its claim of failure of consideration.

A preliminary injunction is granted in the discretion of the court when the moving party can demonstrate immediate and irreparable harm if injunctive relief is denied and a substantial likelihood of ultimate success on the merits. However, the burden of showing probable success is less where plaintiff "has raised questions going to the merits so serious, substantial,

difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation" and "the balance of hardships tips decidedly toward plaintiff."[1]

Frequency clearly establishes immediate and irreparable harm if the preliminary injunction is denied, since negotiation or transfer of the note by Lerner to a holder in due course would cut off Frequency's defense of failure of consideration, rendering futile its claim for declaratory relief.[2]

Whether Frequency demonstrates a substantial likelihood of success is a more difficult question. Frequency can succeed on its claim that the note is void for failure of consideration only by demonstrating that the patent is invalid[3] and that Lerner is not a holder in due course.[4]

Frequency's contention that the patent is invalid rests on 35 U.S.C. § 102(b), which provides, in pertinent part, that a person shall be entitled to a patent unless:

> "the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States."

Frequency offers substantial evidence to show that the atomic clock was in public use, or on sale in this country, prior to October 29, 1957, the date of the patent application. It appears that National held a press conference on October 4, 1956 to demonstrate that the atomic clock was, in National's words, "available for commercial and military use." Further, the clock was undergoing evaluation by the navy as a potential customer at the Naval Research Laboratories as early as September 1956. Thus, it is apparent that the atomic clock was a completed and operational invention at the time of the press conference and that National had begun a campaign to market the device. We cannot say, simply on the basis of these facts, however, that the patent in question is invalid. Nonetheless, we think Frequency has demonstrated a substantial likelihood of success on the issue of validity upon the trial.[5]

Frequency's contention that Lerner is not a holder in due course hinges on whether the patent is in fact invalid and, if so, whether Lerner knew it during, or prior to, the sale of the patent. The heart of Frequency's proof is an affidavit of Martin B. Bloch, president of Frequency, alleging that he met with Lerner in the latter's New York office and that Lerner made false representations concerning the patent in order to induce the purchase of National's assets. Beyond the assertion that Lerner was a principal figure in National's affairs during the transaction, Frequency offers no other evidence to support its claim that Lerner knew the patent was invalid at the time.

Lerner acknowledges meeting with Bloch, but vigorously denies any misrepresentation or knowledge of the invalidity of the patent. Despite his denials, however, which in the last analysis turn on a myriad of facts bearing on the validity of the patent and Lerner's state of mind with respect to those facts, we think that as a principal figure in National's affairs, Lerner is chargeable, at least inferentially, with knowledge of the facts recited above which demonstrate the likelihood of invalidity of the patent.

Moreover, plaintiff's showing of a likelihood of success on the merits is aided by § 3-307 of the Uniform Commercial Code, which provides that once a defense to the note has been shown, the burden is on the party claiming to be a holder in due course, here, Lerner, to prove that he is in fact a holder in due course, i.e., that he took for value and without notice of the patent's alleged invalidity. Given Lerner's undisputed link with National as a former director, shareholder, and member of the executive committee, we think plaintiff has raised serious doubts about Lerner's ability to prove his status as a holder in due course.[6]

Accordingly, while plaintiff's showing falls somewhat short of a clear demonstration of ultimate success on the merits, nonetheless, we think it has satisfied its burden of raising questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation. Plainly, the balance of hardships, if an injunction is denied, tips decidedly in plaintiff's favor.

This is not a case where the granting of a preliminary injunction would be tantamount to complete and final relief for plaintiff. Rather, this is simply a case where the granting of a preliminary injunction will perform its ancient function of maintaining the status quo pending trial.[7] There has been no showing of any urgency requiring immediate resolution by an advanced plenary trial of the issues posed in this action. Nor do we see any serious injury to Lerner if he is compelled to await the ultimate resolution of the issues before negotiating the note, provided plaintiff post a bond adequate to protect Lerner against loss.

Accordingly, the motion for a preliminary injunction is granted upon condition that plaintiff post a bond, in an amount to be fixed by the court in the order to be settled on this decision.

The foregoing constitutes this court's findings of fact and conclusions of law, as required by Rule 52, Fed.R.Civ.P.

Settle order on notice within ten (10) days.

Dated: New York, N. Y.

May 16, 1972

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

FOOTNOTES

1 Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d 738, 740 (2d Cir. 1953).

2 Osborn v. United States Bank, 22 U.S. (9 Wheat.) 738, 845 (1824); Christ v. Vending Enterprises, Inc., 191 F. Supp. 485, 488-89 (E.D.N.Y. 1961); 4 J. Pomeroy, Equity Jurisprudence § 1340 (5th ed. 1941).

3 The purchase and sale agreement between Frequency and National provides that: "This agreement shall be governed in all respects by the laws of the State of Massachusetts." Since the choice of law question was not raised by either party, we simply note that under both New York and Massachusetts law a note given in payment for an invalid patent is void for failure of consideration. Stentor Elec. Mfg. Co. v. Klaxon, 115 F.2d 268 (3d Cir. 1940), rev'd on other grounds, 313 U.S. 487 (1941); Nash v. Lull, 102 Mass. 60 (1869).

4 Uniform Commercial Code § 3-306(c).

5 See Atlas v. Eastern Air Lines, Inc., 311 F.2d 156, 158-162 (1st Cir. 1962), cert. denied, 373 U.S. 904 (1963); Koehring Co. v. National Automatic Tool Co., 362 F.2d 100, 104 (7th Cir. 1966); Aerovox Corp. v. Polymet Mfg. Corp., 67 F.2d 860, 862 (2d Cir. 1933).

6 Hamilton Watch Co. v. Benrus Watch Co., supra, 206 F.2d at 740; Christ v. Vending Enterprises, Inc., supra, 191 F. Supp. at 488-89.

7 Chappell & Co. v. Frankel, 367 F.2d 197, 202 (2d Cir. 1966).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

FREQUENCY ELECTRONICS, INC.,

Plaintiff,

-against-

NATIONAL RADIO COMPANY, INC., and LOUIS LERNER,

Defendants and Third-Party Plaintiffs,

-against-

HERBERT W. KENWAY, MELVIN R. JENNEY, et al.,

Third-Party Defendants.

- -X

72 Civ. 412-CLB

MEMORANDUM AND ORDER

Brieant, J.

Third-party defendant Kenway & Jenney ("Kenway"), a law firm, moves for an order pursuant to Rule 12(b)(2), F.R.Civ.P. dismissing the third-party complaint for want of personal jurisdiction. The third-party plaintiff, Louis Lerner, moves for leave to amend his third-party complaint to plead adequate jurisdictional allegations. Kenway has extended its argument to dismiss so as to apply to the proposed amended third-party complaint, if allowed.

In the main action, Frequency Electronics, Inc. ("Frequency"), a Delaware corporation authorized to do business in the State of New York, sues National Radio Company, Inc. ("National"), a Massachusetts corporation, now defunct, and Louis Lerner, a Florida resident who, at relevant times was National's chief operating officer, director and controlling shareholder. The main action is for breach of a purchase agreement by which National sold Frequency its "Atomichron" product line. Included in the sale were all patents owned by National in connection with this product line. Plaintiff claims that defendants made false representations as to the value and validity of one of these patents.

Defendant Lerner asserts his third-party complaint against Kenway on the theory that if National and he are found liable to Frequency, it was the result of negligence or professional malpractice of members of the Kenway law firm in rendering professional advice to National concerning the validity of the disputed patent, and in drafting that part of the purchase agreement concerning the patent and its assignment.

To secure personal jurisdiction, Lerner relies on New

York CPLR §302(a)(1) and (3)(ii), applicable here pursuant to Rule 4(d)(7). Since Kenway is not present or domiciled in New York, the relevant basis for asserting personal jurisdiction under that statute is that the particular cause of action asserted must arise from the transaction of business or commission of a tortious act within the State of New York, or from a tortious act committed outside the State of New York causing injury within that State. Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 261 N.Y.S.2d 8 (1965); Gillmore v. J. S. Inskip, Inc., 54 Misc.2d 218, 282 N.Y.S.2d 127 (Sup.Ct., Nassau Co. 1967).

A reading of the proposed amended third-party complaint and consideration of the papers read on this motion discloses that Lerner's claim involves professional advice given in Massachusetts by Kenway & Jenne Massachusetts law firm specializing in patent law, to its client, National, a Massachusetts corporation. The transaction of business, the tortious act and the injury took place in Massachusetts. Any business transaction in New York by Kenway on behalf of National or, after the execution of the purchase agreement, on behalf of Frequency, has no bearing on the distinct underlying transactions involved in this third-party complaint,

all of which took place in Massachusetts. Thus Lerner, even by the proposed amended third-party complaint, is unable to bring his claim within the provisions of New York CPLR §302.

Hence, while this Court will allow the proposed amendment (28 U.S.C. §1653), it must, and does, dismiss the amended third-party complaint for lack of jurisdiction over the person of the third-party defendant.

So Ordered.

Dated: New York, New York
May 21, 1974

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FREQUENCY ELECTRONICS, INC., Plaintiff, vs. NATIONAL RADIO COMPANY, INC., and LOUIS LERNER, Defendants.	Civil Action No. 72 CIV 412 (CLB)

Defendant Louis Lerner as and for a First and Second Counterclaim against Plaintiff Frequency Electronics, Inc., hereby alleges as follows:

FIRST COUNTERCLAIM

42. Defendant Louis Lerner ("Lerner") is a resident and citizen of the State of Florida. The Plaintiff Frequency Electronics, Inc. ("Frequency") is a corporation incorporated under the laws of the State of Delaware and has its principal place of business in the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand ($10,000) dollars.

43. Lerner is a holder and owner of that certain promissory note (the "Note") dated February 3, 1969, made by Frequency in the original face amount of $325,000 payable to the order of the National Radio Company, Inc. ("National") which Note is referred to in Paragraph 4 of the Complaint and a copy of which is attached thereto as Exhibit 2.

44. Frequency is in default on said Note, and by virtue of its default owes to Lerner the sum of two hundred and

sixty thousand ($260,000) dollars in principal, plus interest from February 3, 1972, costs and expenses, including attorneys fees, as in the Note provided.

SECOND COUNTERCLAIM

45. Lerner repeats and realleges the allegation set forth in Paragraph 42 above.

46. Lerner is the assignee for value and owner of that certain promissory note (the "Note") dated February 3, 1969, made by Frequency in the original amount of $325,000 payable to the order of National, which Note is referred to in Paragraph 4 of the Complaint and a copy of which is attached thereto as Exhibit 2.

47. Lerner repeats and realleges the allegation set forth in Paragraph 44 above.

WHEREFORE, Defendant Louis Lerner prays that the Court dismiss the Plaintiff's Complaint and enter judgment for the Defendant and against the Plaintiff thereon, and further that the Court enter judgment against the Plaintiff and for the Defendant on either the First or the Second Counterclaims in the amount of Two Hundred and Sixty Thousand ($260,000) Dollars, plus interest from February 3, 1972, together with costs and expenses, including attorneys fees, together with such other and further relief as the Court may deem just and equitable.

By his attorneys,

Leonard I. Schreiber, Esquire
Edwin J. Carr, Esquire
30 Park Avenue
New York, New York 10016
(212) 689-1810
Attorneys for Defendant Louis Lerner

Dated: October 9, 1974

Of Counsel:

Rich, May & Bilodeau
One State Street
Boston, Massachusetts 02109
(617) 742-6550

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FREQUENCY ELECTRONICS, INC., Plaintiff,	:	
- against -	:	ANSWER TO COUNTERCLAIMS
NATIONAL RADIO COMPANY, INC. and LOUIS LERNER, Defendants	:	72 CIV. 412 (CLB)

Plaintiff, FREQUENCY ELECTRONICS, INC., by its attorneys, Pryor, Cashman & Sherman, answering the counterclaims of defendant, LOUIS LERNER, alleges as follows:

AS TO FIRST COUNTERCLAIM

1. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 42 respecting defendant LERNER'S residence and citizenship. Plaintiff admits the remainder of the allegations of Paragraph 42 of the first counterclaim.

2. Plaintiff denies knowledge or information sufficient to form a belief as to the allegation that defendant LERNER is the holder and owner of the promissory note referred to in Paragraph 43 of the first counterclaim, but plaintiff admits that said defendant claims to be such owner and holder.

3. Plaintiff denies each and every allegation set forth in Paragraph 44 of the first counterclaim of defendant LERNER.

AS TO THE SECOND COUNTERCLAIM

4. With respect to the allegations of Paragraph 45 of defendant's second counterclaim, plaintiff repeats and realleges each and every allegation set forth in Paragraph 1 hereof with the same force and effect as if herein set forth at length.

5. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46 of defendant's second counterclaim except denies that defendant LERNER is the assignee for value of the note therein referred to.

6. In response to the allegations of Paragraph 47 of defendant's second counterclaim, plaintiff repeats and realleges each and every allegation set forth in Paragraph 3 hereof with the same force and effect as if herein set forth at length.

AS A SEPARATE DEFENSE TO DEFENDANT'S COUNTERCLAIMS

By order of the Supreme Court of the State of New York dated January 21, 1972 and by orders of this court dated February 2, 1972 and May 24, 1972, defendant LERNER was enjoined, during the pendancy of this action from in any manner seeking to enforce the promissory note or any part thereof referred to in Paragraph 43 of the defendant's counterclaim. By reason thereof, Plaintiff is not liable for the payment of interest on all or any part of said note from January 21, 1972 until such time, if at all, the aforesaid injunctive order of May 24, is vacated.

WHEREFORE plaintiff demands judgment dismissing the counterclaims of defendant LERNER, and entering judgment in favor of the plaintiff as prayed for in the complaint.

PRYOR, CASHMAN & SHERMAN

By: Lawrence M. Sherman
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FREQUENCY ELECTRONICS, INC.	:	
Plaintiff,	:	PRE-TRIAL ORDER
v.	:	Civil Action
NATIONAL RADIO COMPANY, INC. and LOUIS LERNER,	:	No. 72 Civ. 412 (CLB)
Defendants.	:	

On May , 1975, the attorneys for the parties to this action appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure and the following action was taken:

I JURISDICTIONAL STATEMENT

Jurisdiction of this Court is based upon diversity of citizenship (28 U.S.C. § 1332). The matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs. The action was commenced in the Supreme Court of the State of New York, County of New York, and was removed to this Court pursuant to the provisions of 28 U.S.C. § 1441. National Radio Company, Inc. though named as a defendant was not served with process by reason of its liquidation in bankruptcy proceedings. National Radio Company, Inc. is not a party to the action.

II AMENDMENTS TO PLEADINGS

Leave is given to the Plaintiff to amend the complaint by alleging that National Radio Company, Inc. breached the following warranty contained in the Purchase and Sale Agreement (Plaintiff's Exhibit 1):

"NRCI [National Radio] warrants that it has full legal title to the items conveyed hereunder, and that it has the right and authority to convey the same".

and that said breach constitutes a defense by Plaintiff to Defendant Lerner's claim to enforce Plaintiff's promissory note.

Leave is hereby given Defendant Lerner to amend his answer to deny that such language constitutes a warranty by National of the quality of the title conveyed and a further denial that such warranty related in any way to the conveyance of the Atomichron product line, except as to items of inventory and machinery and further Defendant Lerner may amend his answer to plead the special defense of lack of privity between the Plaintiff and Defendant Lerner.

III UNDISPUTED FACTS

1. Louis C. Lerner ("Lerner") is a resident of 2300 Coconut Road, Boca Roton, Palm Beach County, Florida and is a citizen of Florida.

2. Frequency Electronics, Inc. ("Frequency") is a Delaware corporation with a principal place of business at 3 Delaware Drive, New Hyde Park, Long Island, Nassau County, New York and is a citizen of Delaware and New York.

3. On or about August 11, 1970, National Radio Company, Inc. ("National"), a Massachusetts corporation, filed a petition for an arrangement pursuant to Chapter XI of the Bankruptcy Act in the United States District Court for the District of Massachusetts, Bankruptcy Docket No. 70-1006. National was adjudicated a bankrupt on September 7, 1973.

4. Frequency by Abraham Lazar, Vice President, and National by Frank F. Oddi, signed a certain "Letter Agreement", dated December 30, 1968 (Plaintiff's Exhibit 67), and the signatures appearing thereon are the genuine and authorized signatures of Lazar and Oddi.

5. On February 3, 1969, National by Ray E. Horner, its Executive Vice President, and Frequency by Kent M. Klineman, its Secretary, executed a certain document "Purchase and Sale Agreement". The signatures and initials appearing thereon and throughout the document are the genuine and authorized signatures and initials of Horner and Klineman. The hand-written interlineations on said document were entered contemporaneously with the execution of the Agreement. In addition, the deletions from the type-written text of the document were also made contemporaneously with the execution of the Agreement. The hand-written interlineations and deletions to and from the document as aforesaid were authorized by National and Frequency.

6. On or about February 3, 1969, National by Ray E. Horner, its Executive Vice President, and Frequency by Kent M. Klineman, its Secretary, executed a certain document entitled "Security Agreement - (Chattel Mortgate)" (Defendant's Exhibit G). The signatures and initials appearing thereon and throughout the document are the genuine and authorized signatures and initials of Horner and Klineman. The hand-written interlineations on said document were entered contemporaneously with the execution of the Agreement. In addition, the deletions from the printed text of the document were also made contemporaneously with the execution of the Agreement. The hand-written interlineations and deletions to and from the document as aforesaid were authorized by National and Frequency.

7. On February 3, 1969, National and Frequency executed financing statements under the Uniform Commercial Code, listing Frequency as debtor and National as secured party, being in number three (3) sets, and the signatures of Kent M. Klineman and Ray E. Horner are the genuine and authorized signatures of such persons.

8. The items set forth in Exhibit A to the Purchase and Sale Agreement, except with respect to those items referred to in the Agreement of June 27, 1969 (Plaintiff's Exhibit 70), were received by Frequency under Bill of Sale (Plaintiff's Exhibit 10).

9. Frequency acknowledges receipt on or about February 3, 1969, of that certain assignment of patents (Plaintiff's Exhibit 9), together with the attachment thereto.

10. Included among the patents listed on the attachment to the assignment of patents (Plaintiff's Exhibit 9), was a certain patent known as U.S. Patent No. 2,970,115 of February 14, 1961, in the name of J. R. Zacharias, et al, entitled "Molecular Beam Apparatus" (the "Zacharias patent").

11. Frequency acknowledges receipt on or about February 3, 1969, of that certain assignment of trademark (Plaintiff's Exhibit 84).

12. The original purchase price under the aforesaid Purchase and Sale Agreement was $733,000, payable as follows:

$208,000 in cash upon execution of the Agreement;

$200,000 by promissory note, payable on or before August, 1970 (Plaintiff's Exhibit 2);

$325,000 by promissory note, payable in ten (10) equal installments commencing on February 3, 1970 (Plaintiff's Exhibit 3).

Subsequent to the closing, Frequency and National entered into a certain Agreement dated June 27, 1969 (Plaintiff's Exhibit 70), by which Frequency was entitled to a credit of $23,000, reducing the amount due on the $325,000 note (Plaintiff's Exhibit 3), all as provided in the said Agreement of June 27, 1969.

13. Plaintiff has paid to date the sum of $450,000, consisting of $208,000 in cash upon execution of the Purchase and Sale Agreement at the closing, the $200,000 promissory note on or about August 3, 1970, and $30,000 on or about February 3, 1970 and $12,000 on or about February 3, 1971, both of which payments were applied against the $325,000 note (Plaintiff's Exhibit 3), leaving an unpaid balance at the commencement of the action of $260,000.

14. Defendant Lerner was Chairman of the Board and a stockholder owning directly and indirectly not less than 35 - 38 per cent of the outstanding common stock of National at and prior to October 3, 1956, and Defendant Lerner attended the press conference held on October 3, 1956 at the Overseas Press Club.

15. Defendant Lerner from October 3, 1956 through the date of the commencement of this litigation, was a stockholder owning directly and indirectly not less than 35 - 38 per cent of the outstanding common stock of National.

16. On and immediately prior to February 3, 1969, Defendant Lerner held the position of Chairman of the Board, Chairman of the Executive Committee and Treasurer of National.

17. On or about November, 1969, the Middlesex Bank, N.A. loaned National the sum of $300,000 and National assigned the $200,000 promissory note of Frequency (Plaintiff's Exhibit 2),

and the $325,000 note of Frequency (Plaintiff's Exhibit 3), and a certain Security Agreement - Chattel Mortgage (Defendant's Exhibit D), to the Bank as security therefor.

18. On the date of November 5, 1969, Defendant Lerner sent to the Bank a certain letter dated November 5, 1969 (Plaintiff's Exhibit 25). The signature appearing thereon is the genuine signature of Lerner.

19. On or about March 3, 1970, the principal balance due the Bank from National, arising out of the loan of November, 1969, was $270,000.

20. On or about March 3, 1970, Defendant Lerner sent to the Middlesex Bank a certain letter dated March 3, 1970 (Plaintiff's Exhibit 28). The signature appearing thereon is the genuine signature of Lerner.

21. On or about March 10, 1970, the Middlesex Bank renewed the loan to National in the amount of $270,000 for a period of ninety (90) days.

22. On or about April 9, 1970, National executed and delivered, and Defendant Lerner accepted, a certain document entitled "Assignment" with respect to the $325,000 promissory note of Frequency (Plaintiff's Exhibit 13). The signature of Ray E. Horner, signing as President of National, the signature of Louis C. Lerner, and the signature of John A. Lynch, Vice President of the Middlesex Bank, N.A., are the genuine and authorized signatures of such persons.

23. On or about April 9, 1970, National executed and delivered, and Defendant Lerner accepted, a certain document entitled "Assignment" with respect to the $200,000 promissory note of Frequency (Plaintiff's Exhibit 14). The signature of

Ray E. Horner, signing as President of National, and the signature of Louis C. Lerner, are the genuine and authorized signatures of such persons.

24. On or about April 24, 1970, National, by Ray E. Horner, its then President, and Louis C. Lerner, executed a certain letter dated April 24, 1970 (Plaintiff's Exhibit 4). The signatures of Horner and Lerner are genuine and authorized by those persons.

25. Letter dated March 1, 1971, from Middlesex Bank, N.A., addressed to Louis C. Lerner (Defendant's Exhibit G), came from the file of the Middlesex Bank.

Each of the parties to this litigation reserves its right to object to any of the agreed facts as aforesaid on the basis of relevancy and materiality.

IV STIPULATION

Defendant Lerner, for the purposes of this case only, hereby stipulates that the so-called Zacharias patent was invalid at the time of the sale of the Atomichron product line by National to Frequency on February 3, 1969, because the invention described in the so-called Zacharias patent was incorporated in the Atomichron offered for sale at the October [illegible], 1956 press conference conducted by National at the Overseas Press Club, 35 East 39th Street, New York, New York, and in the Atomichrons sold more than one year prior to October 29, 1957, the filing date of the patent application which resulted in the so-called Zacharias patent.

V FACTUAL POSITION ON LIABILITY AND DAMAGES

A. Plaintiff's Contention

Plaintiff contends that the Zacharias patent was void ab initio by reason of the prior public use and sale of the invention more than one year prior to the filing of the application for said patent. Plaintiff contends that it was unaware of that fact prior to and at the execution of the Purchase and Sale Agreement and at the time it acquired the items conveyed thereunder. Plaintiff contends that National Radio Company, Inc. and Defendant Lerner knew or were chargeable with notice that the said patent was void prior to and at the consummation of the Purchase and Sale transaction for the Atomichron product line.

Plaintiff contends that National breached its warranty to Plaintiff of "full legal title" to the items conveyed under the Agreement, that there was a substantial failure of consideration, and that the Agreement was induced by the misrepresentation of National, by its officers and agents including Defendant Lerner, concerning the legal efficacy of said patent.

Plaintiff contends that the Zacharias patent was of great importance to Plaintiff and that had Plaintiff known that it was void for the reasons stated, Plaintiff would not have consummated the transaction with National.

Plaintiff contends that by reason of the position of dominance and control exercised by Defendant Lerner in the ownership and management of National during the entire period in question, and by reason of his direct involvement in the events causing the patent to be a nullity, including his personal participation in the press conference of October 3, 1956, Defendant Lerner can stand in no better position in seeking to enforce Plaintiff's note than National itself could.

Additionally, Plaintiff contends that regardless of the knowledge of the status of the Zacharias patent attributable to Defendant Lerner, he will not be able to show that he is a holder in due course of Plaintiff's $325,000 note for other reasons: he did not take the note by endorsement and negotiation; he did not acquire his interest in the note in good faith; and he did not pay value for the note within the meaning of the Uniform Commercial Code, having already been liable to pay National's debt to the Middlesex Bank as a guarantor.

Plaintiff contends that by reason of the misrepresentations, breach of warranty, and failure of consideration as aforesaid, it has been damaged in an amount in excess of $1,000,000 and that in satisfaction thereof it is entitled to the cancellation of the note and recovery of the additional monies from Defendant Lerner.

B. Defendant Lerner's Factual Position on Liability and Damages

1. On April 9, 1970, Lerner purchased the $325,000 note from National for value and without notice of any defect or invalidity and took said note as a holder in due course.

2. As a holder in due course of said note, Lerner claims against Frequency a default in payment of said note, and claims acceleration of all installment amounts due thereunder together with interest and attorney's fees, as follows:

(a)	Amount due February 3, 1972	$260,000
(b)	Interest to February 3, 1975	93,600
		353,600
(c)	Attorneys fees of 15 per cent	53,040
(d)	Total due at February 3, 1975	$406,640

3. Assuming arguendo that Lerner is not a holder in due course, Lerner - as an assignee for value - never-the-less claims to be entitled to judgment on said note, in the amount aforesaid.

VI LIST OF WITNESSES

A. Plaintiff may call at the trial of this action any or all of the following witnesses:

	Name	Address
1.	Martin B. Bloch	3 Delaware Drive, New Hyde Park, New York
2.	Abraham Lazar	3 Delaware Drive, New Hyde Park, New York
3.	Louis C. Lerner	2300 Coconut Road, Boca Raton, Florida 33432
4.	Kent M. Klineman	1345 Avenue of the Americas, New York, New York 10019
5.	Harold E. Berritt	410 Park Avenue, New York, New York 10022
6.	James George	15 Oak Ledge Road, Swampscott, Massachusetts
7.	Joseph Solano	144 Massapoag Avenue, Sharon, Massachusetts
8.	Dr. R. T. Daly	(Dr. Daly may be asked to testify both as a fact witness and an expert)

In addition to the foregoing, Plaintiff may call one or more additional expert witnesses (whose identity is yet unknown) which may be qualified as experts in the following fields:

1. A technical expert familiar with the operation of the Atomic Frequency Standard.

2. A market or industry expert familiar with the market for Atomic Frequency Standards.

3. An expert on patent law.

B. Defendant Lerner may call at the trial of this action any or all of the following witnesses:

Name	Address
1. Frederick L. Sweeney	111 Washington Street, Melrose, Massachusetts 02176
2. Louis C. Lerner	2300 Coconut Road, Boca Raton, Florida 33432

In addition, the parties may use (to the extent permitted by law) any depositions taken in this matter, including the depositions of Martin Bloch, Defendant Lerner, Abraham Lazar, James George, Joseph Solano, Ray E. Horner, Frank F. Oddi, E. Whitney Drake, Clarence S. Lyon, Henry D. Pahl, Melvin Jenney and John A. Lynch.

VII EXHIBITS

It is agreed between Plaintiff and Defendant that any of the exhibits listed and not objected to by either party may be introduced by either party and that no exhibit herein described shall be deemed in evidence unless offered by either party. In addition, exhibits listed as either Plaintiff's or Defendant's exhibits may be introduced by the other party subject to objection.

Those documents identified by number are contemplated as likely to be offered by Plaintiff; those identified by letter as likely to be offered by Defendant.

Exhibit No.	Description
1.	Purchase and Sale Agreement dated February 3, 1969.
2.	Copy of promissory note of Frequency Electronics, Inc. to National Radio Company, Inc. in amount of $200,000 dated February 3, 1969.
3.	Copy of promissory note of Frequency Electronics, Inc. to National Radio Company, Inc. in amount of $325,000 dated February 3, 1969.
4.	Copy of letter dated April 24, 1970 from National Radio Company, Inc. to Louis C. Lerner.

Exhibit No.	Description
5.	Copy of letter from E. Whitney Drake, Esq. to Thomas H. Bilodeau, Esq. dated January 29, 1969. Defendant objects to the admissibility of this document on the grounds of attorney-client privilege, opinion and hearsay.
6.	Copy of document captioned "Letter Agreement" between National Radio Company, Inc. and Frequency Electronics, Inc. Plaintiff objects to this document on the grounds of the parol evidence rule.
7.	Copy of letter from Rich, May & Bilodeau to E. Whitney Drake, Esq. dated January 10, 1969. Defendant objects to this document on the same grounds as stated with respect to Exhibit 5.
8.	Copy of letter from E. Whitney Drake, Esq. to Thomas H. Bilodeau, Esq. and Clarence S. Lyon, Esq. dated January 28, 1969. Defendant objects to this document on the same grounds as stated with respect to Exhibit 5.
9.	Assignment of patents acknowledged January 31, 1969.
10.	Bill of Sale from National Radio Company, Inc. to Frequency Electronics, Inc. dated January 31, 1969.
11.	Copy of letter from Rich, May & Bilodeau to E. Whitney Drake, Esq. dated August 9, 1971. Defendant objects to this document on the grounds of attorney-client privilege, hearsay, and that it was prepared in contemplation of litigation.
12.	Copy of letter from E. Whitney Drake, Esq. to Edwin J. Carr, Esq. dated September 29, 1971. Defendant objects to this document on the same grounds as stated with respect to Exhibit 11. Plaintiff objects to portions thereof as stating opinions and conclusions of law.
13.	Copy of assignment from National Radio Company, Inc. to Louis C. Lerner re promissory note in the amount of $325,000 dated April 9, 1970.
14.	Copy of assignment from National Radio Company, Inc. to Louis C. Lerner re promissory note in the amount of $200,000 dated April 9, 1970.
15.	Copy of draft of document entitled "Novation Agreement" dated November 5, 1969. Defendant objects to this document on the grounds of relevancy, materiality and hearsay.
16.	Copy of letter from Harold E. Berritt, Esq. to Mr. John Lippencott dated November 3, 1969. Defendant objects to this document on the grounds of relevancy and materiality.

Exhibit No.	Description
17.	Copy of letter from National Radio Company, Inc. to Louis C. Lerner dated October 23, 1969. Defendant objects to this document on the grounds of relevancy and materiality.
18.	Copy of draft of letter captioned "Dear Lou: Re: FEI Promissory Notes; Cash and Discounting". Defendant objects to this document on the grounds of relevancy, materiality, hearsay and opinion.
19.	Copy of minutes of regular meeting of the Board of Directors of National Radio Company, Inc. dated January 31, 1969. Defendant objects to this document on the grounds of relevancy and materiality.
20.	Copy of assignment from National Radio Company, Inc. to Middlesex Bank, N.A. dated November 6, 1969. Plaintiff objects to this document on the grounds of relevancy and materiality.
21.	Copies of memos from files of Middlesex Bank captioned "National Radio Company, Inc."
22.	Copies of Middlesex Bank loan collateral cards re National Radio Company, Inc.
23.	Copy of letter from Middlesex Bank to Louis C. Lerner dated August 12, 1970.
24.	Copy of letter from Middlesex Bank to Frequency Electronics, Inc. dated January 20, 1971.
25.	Copy of letter from Louis C. Lerner to Middlesex Bank dated November 5, 1969. Defendant objects to this document on the grounds of relevancy and materiality.
26.	Copy of Middlesex Bank memo captioned "Lerner & Co." Defendant objects to the portion of this document from the period August 23, 1971 and following, on the grounds of relevancy and materiality.
27.	Copy of Middlesex Bank liability card re Louis C. Lerner.
28.	Copy of letter from Louis C. Lerner to Middlesex Bank dated March 3, 1970. Defendant objects to this document on the grounds of relevancy and materiality.
29.	Copy of National Radio Company, Inc. form 8-K filed with the Securities and Exchange Commission for the month of April, 1970, together with exhibits.
30.	Copy of minutes of Board of Directors meeting of National Radio Company, Inc. dated April 24, 1970.
31.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of May, 1968.

Exhibit No.	Description
32.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of June, 1968.
33.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of April, 1969.
34.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of June, 1969.
35.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of July, 1969.
36.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of August, 1969.
37.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of September, 1969.
38.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of October, 1969.
39.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of November, 1969.
40.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of December, 1969.
41.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of January 1970.
42.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of February, 1970.
43.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of March, 1970.
44.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of April, 1970.
45.	Securities and Exchange Commission form 4 for Louis C. Lerner for calendar month of May, 1970. Defendant objects to Exhibits 31 - 45 on the grounds of relevancy and materiality.
46.	Copy of document entitled "Preliminary Memorandum" bearing initials "HDP", dated November 14, 1968. Defendant objects to this document on the grounds of relevancy, materiality, hearsay, opinion and attorney-client privilege.
47.	Copy of memorandum from Clarence S. Lyon, Esq. to Gideon Cashman, Esq. "Frequency Electronics Claim of Infringement against Hewlett-Packard", dated March 17, 1971. Defendant objects to this document on the grounds of relevancy, materiality, hearsay, opinion and attorney-client privilege.

Exhibit No.	Description
48.	Copy of U.S. Patent No. 2,972,115.
49.	Copy of file history of U.S. Patent No. 2,972,115. Defendant objects to this document on the grounds of relevancy, materiality and opinion.
50.	Letter from Hewlett-Packard to Clarence S. Lyon, Esq. dated August 24, 1970.
51.	Letter from Hewlett-Packard to Clarence S. Lyon, Esq. dated September 17, 1970.
52.	Letter from Hewlett-Packard to Clarence S. Lyon, Esq. dated October 1, 1970.
53.	Letter from Hewlett-Packard to Clarence S. Lyon, Esq. dated October 13, 1970.
	Defendant objects to Exhibits 50 - 53 on the grounds of relevancy, materiality, hearsay and opinion.
54.	Scientific American article titled "Atomic Clocks", dated February 1, 1957 pages 71 - 82.
55.	Brochure "The National Atomichron" described at press conference of October 3, 1956.
56.	Photographs and publicity releases (2) re October 3, 1956 press conference.
57.	Boston Traveler article Wednesday, October, 24, 1956.
58.	New York Times article "Atomic Time Piece Displayed Here", Thursday, October 4, 1956.
59.	New York Herald Tribune article "$50,000 Atomic Clock Accurate for 3,000 Years", dated October 4, 1956.
60.	New York Times article "Science and Review", Sunday, October 7, 1956.
61.	Brochure "Atomichron Interim Instruction Manual".
62.	Atomic Beam Frequency Standard final report covering period June, 1955 to January, 1957.
63.	Report titled "Completion Report on DR 1277" dated March 30, 1956.
64.	"Technical Proposal Advanced Research and Development", etc., February 15, 1956.
65.	"Cesium Beam Frequency Standards - Instructions for Models NC 1001, NC 1001A".
66.	Technical Manual - Model 3702.

Exhibit No.	Description
67.	Technical Manual re Hewlett-Packard Frequency Standard.
68.	"Atomichron Record" (one sheet).
	Defendant objects to Exhibits 54 - 68 on the grounds of relevancy and materiality.
69.	Copy of letter from E. Whitney Drake, Esq. to Harold E. Berritt, Esq. dated July 16, 1969. Defendant objects to this document on the ground of the parol evidence rule.
70.	Copy of Agreement between Frequency Electronics, Inc. and National Radio Company, Inc. dated June 27, 1969 re credits.
71.	Copy of letter from Middlesex Bank to Frequency Electronics, Inc. dated August 12, 1970.
72.	Copy of letter from Middlesex Bank to Frequency Electronics, Inc. dated July 20, 1970.
73.	Copy of letter from Middlesex Bank to Frequency Electronics, Inc. dated January 20, 1970.
74.	Securities and Exchange Commission form 8-K for National Radio Company, Inc. for the month of August, 1970.
75.	Securities and Exchange Commission form 8-K for National Radio Company, Inc. for the month of December, 1969.
76.	Securities and Exchange Commission form 8-K for National Radio Company, Inc. for the month of June, 1969.
77.	Securities and Exchange Commission form 8-K for National Radio Company, Inc. for the month of July, 1969.
78.	Securities and Exchange Commission form 10-K for National Radio Company, Inc. for fiscal year ended December 31, 1968.
79.	Securities and Exchange Commission form 10-K for National Radio Company, Inc. for fiscal year ended December 31, 1969.
	Defendant objects to Exhibits 74 - 79 on the grounds of relevancy and materiality.
80.	Copy of memorandum from E. Whitney Drake, Esq. to Mr. Ray E. Horner dated February 9, 1970. Defendant objects to this document on the grounds of relevancy, materiality and hearsay.
81.	Assignment of trademark.

Defendant Lerner intends to introduce, in addition to certain of the Plaintiff's exhibits, the following exhibits:

Exhibit No.	Description
A	Security Agreement between Frequency Electronics, Inc. and National Radio Company, Inc. dated February 3, 1969. Plaintiff objects to said document on the grounds of relevancy and materiality.
B	Uniform Commercial Code Financing Statements signed by Frequency Electronics, Inc. and National Radio Company, Inc. on or about February 3, 1969, and filed with, (i) County Clerk of Nassau County, (ii) Secretary of State for the State of New York, and (iii) Secretary of State for the Commonwealth of Massachusetts. Plaintiff objects to said document on the grounds of relevancy and materiality.
C	Uniform Commercial Code Financing Statements Form UCC-3, assignment of rights of National Radio Company, Inc. to Middlesex Bank, N.A., and filed with, (i) County Clerk of Nassau County, (ii) Secretary of State for the State of New York, and (iii) Secretary of State for the Commonwealth of Massachusetts. Plaintiff objects to said document on the grounds of relevancy and materiality.
D	Uniform Commercial Code Financing Statements Form UCC-3, assignment of rights of Middlesex Bank, N.A. to Louis C. Lerner and recorded with, (i) County Clerk of Nassau County, (ii) Secretary of State for the State of New York, and (iii) Secretary of State for the Commonwealth of Massachusetts. Plaintiff objects to said document on the grounds of relevancy, materiality, authenticity and hearsay.
E	Letter from Middlesex Bank, N.A. to Louis C. Lerner dated March 1, 1971. Plaintiff objects to said document on the grounds of relevancy, materiality, authenticity and hearsay.
F	Assignment from National Radio Company, Inc. to Louis C. Lerner dated April 16, 1970. Plaintiff objects to said document on the grounds of relevancy and materiality.

See Rider A annexed hereto.

VIII TRIABLE ISSUES

1. Whether the invalidity of the Zacharias patent for the reasons stipulated constitutes a breach of warranty under the Purchase and Sale Agreement by National.

RIDER A

Exhibit No.	Description
G	Copies of minutes of meeting of Board of Directors of Plaintiff dated January 21, 1969.
H	Copies of minutes of meeting of Board of Directors of Plaintiff dated April 29, 1969.
I	Copies of minutes of meeting of Board of Directors of Plaintiff dated July 31, 1969.
J	Copies of minutes of meeting of Board of Directors of Plaintiff dated March 19, 1970.
K	Copies of minutes of meeting of Board of Directors of Plaintiff dated May 13, 1971.

2. Whether the invalidity of the Zacharias patent for the reasons stipulated constitues a failure of consideration, such that Plaintiff has a defense to the payment of the $325,000 note.

3. Whether Plaintiff has a defense to the payment of the $325,000 note by reason of the misrepresentations of National's representatives, including Lerner.

4. Whether, by reason of any of the above, Plaintiff is entitled to recover damages from Defendant Lerner, and if so, the extent of same.

5. Whether Defendant Lerner is a holder in due course of Plaintiff's $325,000 promissory note, and, if so, to what amount.

6. In determining the issues, what law applies?

7. Is Frequency in default in payment of the installments under the $325,000 note?

8. Has there been an acceleration of payments due under said note by reason of Frequency's failure to pay installments thereunder?

9. Whether any amount is due Lerner by Frequency under said note and if so, how much.

10. Whether the Purchase and Sale Agreement is valid and enforceable according to its terms.

11. Who is entitled to possession of the assets secured by the Security Agreement.

Dated: New York, New York
May 27, 1975

SO ORDERED:

S/ Charles L. Brieant, Jr.
U.S.D.J.

#43507

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

FREQUENCY ELECTRONICS, INC.,

Plaintiff,

-against-

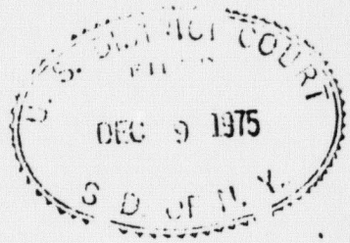
NATIONAL RADIO COMPANY, INC. and LOUIS LERNER,

Defendants.

- -X

72 Civ. 412-CLB

FINDINGS AND CONCLUSIONS



Brieant, J.

This action was originally commenced in the Supreme Court of the State of New York and was removed to this Court pursuant to 28 U.S.C. §1446. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332.

The plaintiff has sought a declaratory judgment that a promissory note made by plaintiff Frequency Electronics, Inc. ("Frequency") payable to National Radio Company, Inc. ("National") is void. In addition, plaintiff has demanded damages for an alleged breach of warranty and fraudulent misrepresentation in the assignment of a patent.

National was adjudicated a bankrupt on September 7, 1973 and is no longer a party to this action.

A non-jury trial commenced on June 9, 1975 and what follows constitutes this Court's Findings of Fact and Conclusions of Law as required by Rule 52, F.R.Civ.P.

This action stems from a Purchase and Sale Agreement which was executed by Frequency and National on February 3, 1969. By ¶16 thereof the parties provided that "... this agreement shall be governed in all respects by the laws of the State of Massachusetts." By that agreement National sold to Frequency its product line known as the "Atomichron"[1], and all assets (inventory, machinery and equipment) related to that line. As part of that transaction National assigned 19 patents which it owned to Frequency. One of those patents was for a "molecular beam apparatus" developed by Dr. Jerrold Zacharias for use in an atomic clock (the "Zacharias patent").

Frequency paid a total purchase price of $733,000.00, plus a 5% royalty for 10 years and an equal division of the proceeds with National of any net recovery from any patent infringement

actions brought against third parties by Frequency under the assigned patents. As part of the price, Frequency gave National two promissory notes, one of which, in the face amount of $325,000.00 has not been paid in full. This note was payable in ten equal annual installments commencing on February 3, 1970. On June 27, 1969, by agreement of the parties, a credit of $23,000.00 was given to the plaintiff by reducing the face amount of the note to $302,000.00. Some payments have been made, and the balance remaining at the commencement of the action was $260,000.00. The other note in the principal amount of $200,000.00 came due on August 3, 1970, and was paid at that time.

In the Purchase and Sale Agreement the total consideration of $733,000.00 was allocated as follows: inventory, $250,000.00; machines and equipment, $158,000.00; data and patents, $325,000.00.

The two Frequency notes were subsequently acquired by defendant Lerner, the Chairman of the Board, Treasurer and principal shareholder of National. In November 1969, the Middlesex Bank, N.A. in Massachusetts loaned National $300,000.00. As part of the security for this loan, National pledged the two Frequency notes and turned them over to the Bank. In the Spring of 1970, the

COPY

principal balance due Middlesex from National was $270,000.00. On April 9, 1970, National assigned, with the permission of the Bank, both notes to the defendant Lerner, for a purchase price of $323,000.00.

Plaintiff asserts two basic claims: First, that the note is void for lack of consideration and breach of warranty on the ground that the Zacharias patent is invalid, that National specifically warranted it as valid in the Agreement, and that it was so central to the transaction that its invalidity constitutes a total failure of consideration; and second that the plaintiff is entitled to damages because National's management together with Lerner fraudulently misrepresented the patent's validity.

Defendant Lerner has denied any fraud on his part, and in his counterclaim he demands payment of the $325,000.00 note as a holder in due course, i.e., as one who is entitled to payment free of any "personal defenses," such as lack of consideration, breach of warranty, or fraud in the inducement, that might be available against National. See Ann. Laws of Mass., ch. 106, §3-305 (1963). In the alternative defendant claims that he is an assignee for value without notice under general principles of contract law.

For the purposes of this case, the parties have stipulated that the Zacharias patent is invalid by reason of 35 U.S.C. §102(b) which provides that a person is entitled to a patent unless:

> " ... the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, ..."

On October 3, 1956, National held a press conference at the Overseas Press Club in New York to demonstrate that its Atomichron, which incorporated the Zacharias patent, was available for commercial and military use. Dr. Zacharias did not apply for a patent until October 29, 1957.[2/] Thus the atomic clock was a completed and operational device at the time of the press conference. National had begun a campaign to market the Atomichron and is thus chargeable with knowledge of the patent's invalidity. As noted by Judge MacMahon in his decision granting a preliminary injunction in this case, reported at 342 F.Supp. 1159, 1161, n.3, a note given in payment for an invalid patent is void for failure of consideration under Massachusetts law. Nash v. Lull, 102 Mass. 60 (1869).

National also breached the warranty of good title which it made in ¶ 2 of the Purchase and Sale Agreement. By that paragraph, National warranted that it had full legal title to the items conveyed and that it had the right and authority to convey them. The law is clear that a party can have no title and therefore cannot convey any title to a void patent, and that there can be neither legal nor equitable ownership of such a patent. Kennedy v. Hazelton, 128 U.S. 667 (1888); Koehring Co. v. National Automatic Tool Co., 257 F.Supp. 282, 289 (D. Ind. 1966), aff'd, 385 F.2d 515 (7th Cir. 1967); Tracerlab, Inc. v. Industrial Nucleonics Corp., 204 F.Supp. 101, 104 (D. Mass. 1962), rev'd. on other grounds, 313 F.2d 97 (1st Cir. 1963).

Frequency thus has two valid defenses against National, namely failure of consideration and breach of warranty. Whether these defenses are available against Lerner depends upon whether Lerner is a holder in due course of the promissory note. Section 3-307(3) of the Uniform Commercial Code, Ann. Laws of Mass., ch. 106, §3-307(3) (1963) requires that once a defense to a note has been shown, the party claiming to be a holder in due course has the burden of proving that he is in all respects a holder in due course. Thus Lerner must prove that he took the instrument for

value, in good faith and without notice of any defense against the note on the part of any person. Ann. Laws of Mass., ch. 106, §3-303(1963).

Lerner has not sustained his burden of showing that he had no notice of the defense of failure of consideration at the time the note was negotiated to him in April, 1970. Section 1-201(25) of the Uniform Commercial Code, Ann. Laws of Mass., ch. 106, §1-201(25) (1963), provides that a person has notice of a fact when:

> " ... (a) he has actual knowledge of it; (b) he has received a notice or notification of it; or (c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists."

The evidence shows, and I find, that Lerner was the dominant person in the affairs of National. He owned approximately 35% of the outstanding shares of National and was Chairman of the Board and of the Executive Committee. He participated fully in National's affairs and was knowledgeable about the company's activities in developing and promoting the Atomichron. He was present at the press conference at the Overseas Press Club on October 3, 1956, perhaps the key event which resulted in the

Zacharias patent being invalid. He had knowledge of both the circumstances surrounding the origins of the Zacharias patent and National's activities related to it, sufficient to put upon him a duty to inquire further. He is thus chargeable with knowledge of all the facts which such an inquiry would have revealed. One who takes a negotiable instrument knowing that it was issued without consideration takes with notice of a defense of a party to the instrument and cannot be a holder in due course. Therefore under §3-306(c) of the Uniform Commercial Code, Ann. Laws of Mass., ch. 106, §3-306(c) (1963), Lerner takes the instrument subject to the defense of failure of consideration and cannot enforce the note to the extent that Frequency received nothing in exchange for it.

The evidence cited above also negates Lerner's claim that he is an assignee for value without notice.

Frequency also claims that it was defrauded by National and Lerner. At common law, to recover in an action for fraud, plaintiff must prove the existence of five indispensable elements: (1) a representation of a material fact; (2) the falsity of that representation; (3) an intent to deceive on the part of the

defendant, or at least a state of mind so reckless as to be the equivalent of such intent (scienter); (4) a justifiable reliance upon the misrepresentation by the party deceived which induces him to act thereon; and (5) injury to that party as a result of his reliance on the misrepresentation. See W. Prosser, Law of Torts, §§100-105 (3d ed. 1964); Norton v. Curtiss, 433 F.2d 779, 793 (C.C.P.A. 1970). In certain respects the Massachusetts law of fraud differs from the common law. These differences will be noted below.

The evidence shows, and I find, that Martin Bloch, the President of Frequency had several meetings with Lerner at the latter's offices in New York. During these meetings, Lerner spoke of the very strong patent position that National held on the atomic frequency device (Tr. p. 28). Bloch also testified and the Court finds, that either Lerner or Mr. Oddi in Lerner's presence handed Bloch a memorandum (Plaintiff's Ex. 46) prepared by National's patent attorney which stated that the Zacharias patent was valid and that Hewlett-Packard was infringing it. Lerner was unable to deny these allegations; he testified that he might have discussed patents with Bloch and that the discussion " ... may have referred to the Zacharias patent which I knew existed ..." (Tr. pp. 266-67).

From all of the above evidence, the plaintiff has shown that Lerner and other members of National's management made statements concerning the validity of the Zacharias patent. This Court will also draw the reasonable inference from the entire testimony, and particularly Paragraph 8 of the Purchase and Sale Agreement (Plaintiff's Ex. 1) that Lerner and National's management made the statement that there was an outstanding claim against Hewlett-Packard for infringing the Zacharias patent. By paragraph 8 of the contract, captioned NCRI Causes of Action, National assigned any patent infringement causes of action, provided that Frequency assumed all the risks of litigation and agreed to share equally the net proceeds of any recovery with National. This clause is obviously more than just boiler-plate and is some evidence that Frequency believed and understood at the time of the agreement that there was an outstanding claim for infringement of the Zacharias patent against Hewlett-Packard. The only discussion which Frequency ever had with National on the topic of possible patent infringement actions against third-parties concerned infringement of the Zacharias patent by the Hewlett-Packard atomic clock. Frequency's belief and understanding that there was such a pending infringement

claim arose from statements made and information supplied by Lerner and other members of National's management.

As for the materiality of these representations concerning the Zacharias patent, there was undisputed testimony that the invention covered by the Zacharias patent is absolutely essential to the successful commercial exploitation of the atomic clock and that it has been used in every version of the clock ever marketed. For Frequency the Zacharias patent and the existence of a claim against Hewlett-Packard were key elements in the whole transaction because the evidence shows that its management did not think that without proper patent protection, it could compete successfully with Hewlett-Packard, a company many times the size of Frequency.

As for the second element it is now clear that the representations made and the information supplied by Lerner and National's management to Frequency concerning both the validity of the Zacharias patent and the existence of a cause of action for patent infringement against Hewlett-Packard were false. Thus the second element requiring falsity in the representations is satisfied.

To satisfy the third element, Massachusetts law does not require proof of an outright fraudulent intent. If a statement of fact which is susceptible of actual knowledge is made as of one's own knowledge and is false, it may be the basis of an action for fraud without proof of an actual intention to deceive. Pietrazak v. McDermott, 341 Mass. 107, 167 N.E.2d 166, 168 (Sup. Jud. Ct. 1960); Robichaud v. Athol Credit Union, 352 Mass. 351, 225 N.E.2d 347, 350 (Sup. Jud. Ct. 1967). Lerner and National's other personnel made statements of fact concerning the patent's validity and the existence of a cause of action for patent infringement as of their own knowledge. In view of Mr. Lerner's position with National as Chairman of the Board and principal shareholder, his personal presence at the 1956 press conference, and his knowledge of the underlying facts relating to the development of the Zacharias patent, the patent's importance, and Hewlett-Packard's alleged infringement, this Court will draw the inference that Lerner was in a position to find out the truth about the Zacharias patent and the supposed cause of action for patent infringement. Under Massachusetts law, that is all that is necessary to satisfy the scienter requirement.

The evidence also establishes that Frequency relied upon these misrepresentations. Mr. Bloch testified, and I find, that Frequency's ability to compete successfully with Hewlett-Packard in the production of atomic clocks depended in large part upon the strong patent position which it thought it was acquiring from National. Mr. Bloch also testified, and I find, that he was worried about the patent situation and that he relied on the Memorandum of Patent Counsel (Plaintiff's Ex. 46) in recommending to Frequency's Board of Directors that it approve the purchase of the Atomichron product line. (Tr. pp. 53-54).

Whether this reliance was justifiable is of course a separate problem. Frequency did not make its own investigation of the validity of the Zacharias patent which it now claims was so central to the whole transaction. The question naturally presents itself as to why Frequency did not take steps to obtain an independent evaluation of what it now contends was a crucial part of the deal. After all, the parties were engaged in an arms length negotiation, and Frequency had the advice of competent counsel. Clearly, Frequency could have demanded that its own counsel examine the patent position which it was acquiring.

Fortunately for plaintiff, the law in Massachusetts seems to be that the recipient of a misrepresentation in a business transaction is justified in relying on its truth although he might have ascertained the falsity of the representation had he made an investigation on his own. Yorke v. Taylor, 322 Mass. 368, 124 N.E.2d 912, 916 (Sup. Jud. Ct. 1955).

Finally we come to the question of damages. The evidence shows, and I find, that Frequency was damaged by its reliance on the material misrepresentations made by National's management and Lerner. The law in Massachusetts is that the plaintiff is entitled to recover the difference between the value of what he has actually received and the value of what he would have received if the fraudulent misrepresentations had been true. Rice v. Price, 340 Mass. 502, 164 N.E.2d 891, 894 (Sup. Jud. Ct. 1960). If the fraudulent representations had been true, the plaintiff would have acquired a strong patent position in the atomic clock market. According to the parties own allocation of the consideration in Paragraph 3(c) of the Purchase and Sale Agreement, data and patents together were worth $325,000.00. The value of what plaintiff actually did receive is unclear. While Frequency apparently still owns the 18 other patents and the

data assigned by National, it claims that the Zacharias patent was the key to the transaction and that without it all the other patents and data were worthless. The defendant of course disputes this but has not provided much evidence in support of its contention that the Zacharias patent was not crucial.

In sum, the plaintiff has not provided the Court with any basis for allocating the $325,000.00 total consideration for data and patents among the Zacharias patent, the 18 other patents, and the data transferred. Fortunately, the Court is not without a remedy in this situation. It is the purpose of a trial to dispose of all of the disputed issues and to reach a just resolution of the action. The trial is now over, and the Court will resolve all disputed issues on the present record.

On its fraud claim, the plaintiff is entitled to a partial rescission of the transaction, since the misrepresentations related only to one element of the entire transaction. Thus the outstanding debt of $260,000.00 should be cancelled and plaintiff should recover the sum of $42,000.00, the amount which it has paid on the note, [$65,000.00 less the $23,000.00 credit]

on condition that it assign to Lerner the 19 patents and all data relating to the Atomichron. This result restores to each party the consideration which it parted with in the original deal. Thus the plaintiff will receive back the cash and the note which it issued as payment for the data and patents, while Lerner as successor to National will acquire the patents and all data relating to the Atomichron which was the agreed consideration for the note. Treating the Zacharias patent as a nullity, the plaintiff would ordinarily not be required to assign it to Lerner. However, since the stipulation of invalidity is limited to this action only, it shall also be assigned.

Accordingly, the plaintiff is entitled to a judgment in the amount of $42,000.00, plus interest at 6% since January 24, 1972, and costs. The judgment shall state that the plaintiff's outstanding note shall be cancelled and that said note shall be so marked and returned to the plaintiff provided that upon payment, Frequency shall assign to Lerner, free and clear of all claims of third parties, the 19 patents and all data relating to the Atomichron, which items are set forth in more detail in the Purchase and Sale Agreement of February 3, 1969.

Settle Judgment on notice.

Dated: New York, New York
December 9, 1975

CHARLES L. BRIEANT, JR.
U. S. D. J.

F O O T N O T E S

1. The "Atomichron" was the registered trademark and tradename under which National manufactured and sold a device known generally as the atomic clock. The atomic clock is the most accurate commercially available means for keeping time. Both National and the Hewlett-Packard Corporation of Palo Alto, California were in the business of manufacturing atomic clocks at the time of the Purchase and Sale Agreement in February 1969.

2. Indeed National had sold and delivered one of the Atomichrons to the Naval Research Laboratory in Washington, D. C., more than one year prior to the filing of the patent application.

Copy.

U.S. DISTRICT COURT
FILED
JAN 16 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREQUENY ELECTRONICS, INC.,

Plaintiff,

-against-

NATIONAL RADIO COMPANY, INC. and LOUIS LERNER,

Defendants.

72 Civ. 412-CLB

JUDGMENT

#76,054

This action came on for trial before the court, Hon. Charles L. Brieant, Jr., District Judge, presiding, and the issues having been duly tried and the court having filed its findings of fact and conclusions of law, it is hereby

ORDERED and ADJUDGED that plaintiff's outstanding note in face amount of three hundred and twenty-five thousand ($325,000) dollars be and hereby is cancelled and that said note shall be so marked by defendant, Louis Lerner, and returned to the plaintiff, and it is further

ORDERED and ADJUDGED that plaintiff recover of the defendant, Louis Lerner, the sum of forty-two thousand ($42,000) dollars, with interest thereon at the rate of six (6%) percent from January 24, 1972 and costs of the action, and it is further

ORDERED and ADJUDGED that upon payment of this Judgment plaintiff shall assign to defendant Lerner, free and clear of all claims of third parties, the nineteen (19) patents assigned to plaintiff by National Radio Company, Inc. under date of February 3, 1969, and all data relating to the Atomichron.

Dated: New York, New York
January 16, 1976

Charles L. Brieant Jr.
U.S.D.J.

JUDGMENT ENTERED - 1/20/76
Raymond F. Burghardt
CLERK

me herein, by a
person so served to be the person mentioned and d
Sworn to before me, this day of

105

py thereof to
pers as the
personally. Deponent knew the
therein.

BEST COPY AVAILABLE

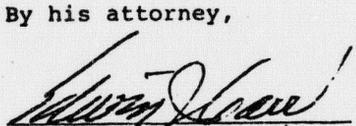
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREQUENCY ELECTRONICS, INC., Plaintiff, -against- NATIONAL RADIO COMPANY, INC., and LOUIS C. LERNER, Defendants.	Civil Action No. 72 Civ. 412-CLB

NOTICE OF APPEAL

Notice is hereby given that Louis C. Lerner, one of the above-named defendants, hereby appeals to the United States Court of Appeals for the Second Circuit from the (i) Findings and Conclusion and (ii) the Judgment of the United States District Court for the Southern District of New York made by the Honorable Charles L. Brieant, Jr., D.J., said Judgment being entered on the docket on January 19, 1976.

By his attorney,



Edwin J. Carr, Esquire
Rich, May & Bilodeau
One State Street
Boston, Massachusetts 02109
Phone: (617) 742-6550

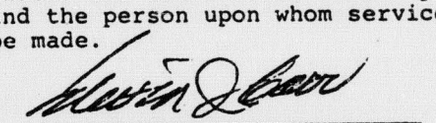
Local Counsel:

Leonard I. Schreiber, Esquire
30 Park Avenue
New York, New York 10016
Phone: (212) 689-1810

NOTICE AND DESIGNATION

Pursuant to Rule 4(a) of the General Rules of this Court the undersigned hereby designates the above-named attorney as Local Counsel in this case and the person upon whom service of papers in this case may be made.

Dated: February 10, 1976



Edwin J. Carr

Counsel of Record for Plaintiff, Frequency Electronics, Inc.: Sanford M. Goldman, Esquire; Pryor, Cashman & Sherman; 410 Park Avenue, New York, New York 10022.

Defendant National Radio Company, Inc., has not been served in this action, has not appeared and has no counsel of record.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

FREQUENCY ELECTRONICS, INC.,

Plaintiff,

vs. 72 Civ. 412

NATIONAL RADIO COMPANY, INC., and LOUIS LERNER,

Defendants.

----------x

Before:

HON. CHARLES L. BRIEANT,

District Judge.

New York, June 9, 1975,
2:30 p.m.

APPEARANCES:

PRYOR, CASHMAN & SHERMAN, ESQS.,
Attorney for plaintiff;
Sanford M. Goldman, Esq., of Counsel
-and-
AMSTER & ROTHSTEIN, ESQS.,
Daniel Ebenstein, Esq., of Counsel

LEONARD I. SCHREIBER, ESQ.,
Attorney for defendants;
-and-
RICH, MAY & BILODEAU, ESQS.,
Edwin J. Carr, Esq., of Counsel

- -

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

(Case called.)

MR. GOLDMAN: The plaintiff is ready.

MR. SCHREIBER: The defendant is ready, your Honor.

THE COURT: I have your pretrial order here, gentlemen, and I have the memoranda which I didn't get a chance to read completely because I finished a trial this morning which was held over.

Are you all set to go? Have you exhausted any last-minute possibilities of discussing this matter with each other?

MR. GOLDMAN: We are ready, your Honor, to proceed.

THE COURT: All right, you may do so.

MR. GOLDMAN: With the court's permission, I would like to make a brief opening statement on behalf of the plaintiff.

THE COURT: Very brief, if you will.

MR. GOLDMAN: Your Honor, on February 3, 1969 the plaintiff, Frequency Electronics --

THE COURT: You don't need to repeat the data in the pretrial record. Just tell me what your contentions are, what you expect to prove here, and tell me also how you claim that Massachusetts law differs.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

from New York law with respect to this matter. That's not clear to me.

MR. GOLDMAN: Your Honor, let me say this: I had not seen a copy of the brief on behalf of the defendant until five minutes ago. It was our intention to file a posttrial memorandum, with the court's permission. I have not really had an opportunity to see what argument the defendant makes with respect to Massachusetts law and whether any such argument would be applicable in New York law.

Our position, basically, is this: We were sold a product by National Radio Company, a company which is today adjudicated a bankrupt.

The product was a device which, in common parlance, is called an Atomichron, or an atomic frequency standard.

Its commercial utility is in navigation, communications, defense systems and so forth. At the time it was introduced it was heralded as the world's most accurate measuring devices, something that would vary by one second within 3000 years.

The heart, we will contend and we will prove, your Honor, of the product which we bought consisted of the technology and patent protection, and

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

in particular one key patent, a patent which we will, through this trial, refer to as the Zacharias patent, named after its prime inventor who is an internationally reknowned scientist at the Massachusetts of Technology.

Our position is, your Honor, and it is stipulated and agreed by the defendant, that that patent, at the time it was sold to us, was a nullity; it was void; it didn't exist. The reason why it was void, the reason why it didn't exist, is because National had displayed the product containing the Zacharias invention, had offered it for sale, and had in fact sold it more than one year prior to the filing of the application for letters patent.

For two years, your Honor, we made that claim in this trial and the defendant resisted us on that point, and on the eve of trial the defendant stipulated that it wa so, and that the patent is void and it is a nullity.

Now, the reason why it is void and it is a nullity, your Honor, is that because there was an important press conference that was held in New York City at the Overseas Press Club in October, 1956, and at that press conference, to which major representatives of the government and private industry were in-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

volved, and international publicity attended it, and articles appeared in the New York Times and the Herald Tribune and so forth, at that press conference, your Honor, representatives of National were there, they showed it, they displayed it, they offered it for sale, and among the people that were there, your Honor, by his own admission, and by the stipulation in this case, was the defendant Lerner.

What's more, my brother, Leonard I. Schreiber, sitting at counsel table, was also there, being a director of National Company, and my brother Mr. Carr has a partner, Mr. Bilodeau, who was there also, by Mr. Lerner's admission.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

We claim basically, your Honor, that because of Mr. Lerner's participation in, because of his activities at the press conference, and because of his position with National, which he has conceded, and which he has stipulated included from the time of this press conference and earlier, and through to the day of sale and even beyond, he was by far the largest single stockholder of National.

He was the chairman of the board of directors of National. He was the chairman of the executive committee.

THE COURT: All that is agreed to, isn't it?

MR. GOLDMAN: Yes, and we claim basically that Mr. Lerner, who, in 1970, purported to acquire these notes by assignment, and who was an integral part of the day to day operations of National, and who was there during the time that this press conference took place, and who, your Honor, we will prove by testimony, negotiated with Mr. Block, made statements to Mr. Block concerning this patent and concerning the patent protection that was available, that it ill behooves Mr. Lerner to put on his hat as an innocent third party --

THE COURT: Don't give me rhetoric. It is a nonjury case and I have to try it in a hurry, so I don't want to hear anything flowery like "It ill behooves" people. You have about two more minutes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

MR. GOLDMAN: I apologize, your Honor.

THE COURT: That is fine if you have six lovely housewives from the Bronx sitting there but you don't.

MR. GOLDMAN: Your Honor, I apologize for letting my feelings get away from me.

THE COURT: All right, don't do it. Please continue with what you are going to show.

MR. GOLDMAN: We are going to show that Mr. Lerner, through his intimate connection with National, through his positions,which he admitted were held with National --

THE COURT: You are going to show he had knowledge.

MR. GOLDMAN: -- through the course of the negotiations, had knowledge or was chargeable with notice of these events.

In addition to that, we are going to show that Mr. Lerner doesn't stand in the position of a holder in due course of this note, not only because he had notice and knowledge, which would go to the due course aspect of the holder in due course concept, but because, your Honor, he was not a holder. He took this note by assignment; he didn't take it by endorsement and negotiation and it is our position that we have established and will establish a defense against the payee and that Mr. Lerner's position can rise no higher than that of the payee.

Now, your Honor, there is one more aspect which I will get into very briefly, and that is this:

After we consummated the purchase and sale transaction, we went to the attorneys for National Radio Company, the patent attorneys who had purchased this patent and who had represented National prior to this acquisition and at the time of this acquisition, and we asked them to bring a lawsuit against the Hewlett-Packard Corporation, which is a giant in the industry, and which was really the basis for our consummating this deal.

There is a provision in the agreement which says that we are the assignee of cause of actions for patent infringement and will split them with National, and this was put into the agreement with the Hewlett-Packard situation in mind.

We asked them to sue Hewlett-Packard Corporation for patent infringement, and when they put Hewlett-Packard on notice that we were going to do that, Hewlett-Packard wrote back and said to us,"Sorry, fellows, your patent is void. It is a nullity because of this press conference," et cetera. It was at that time, your Honor, that we made a decision to discontinue operations on this product after we had poured $800,000 of our own money into it, and we brought this action.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

Thank you, your Honor. I believe I have covered it.

THE COURT: All right, who wishes to make an opening statement?

MR. SCHREIBER: I would, your Honor. My name is Schreiber.

Lerner's position is, simply stated, in the first place, as a holder in due course of the note at issue, he is entitled to collect, and there are no defenses available against him as holder in due course.

Secondly, assuming arguendo that he be not a holder in due course, nevertheless, he is entitled to collect because there are no defenses which would be available even against the original payee, National Company.

It is Lerner's contention that this idea that this one patent, one of 19, 19 patents which were quit claimed as part of a deal, which included a lot of hardware, enumerated in a bill of sale and included a trademark and tradename and an entire product line; that this idea that this was a one key patent which failed and therefor everything failed, that was an after-sight when the defendants found that they bought a product line which they were incapable of successfully exploiting and decided that they would try to avoid payment of the balance of the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

note just as in prior times they had tried to minimize the obligation on that note in other ways that we will detail.

We claim that we are entitled to judgment.

THE COURT: All right, call your first witness, please.

MR. GOLDMAN: Your Honor, with your permission, before I do that, may I introduce certain exhibits and read certain admissions into the record which we think lay a proper predicate for the introduction of our first live witness.

THE COURT: All right.

MR.GOLDMAN: Your Honor, at this time I would like to offer into evidence, Plaintiff's Exhibit 1, which has been referred to by the parties in the pretrial order, the purchase and sale agreement. Mr. Carr, do you want to look at that?

MR. CARR: Yes.

THE COURT: All right, you can offer any of those that are agreed to in part 7 of the pretrial order.

MR. GOLDMAN: Yes, your Honor.

THE COURT: Offer them all if you like.

MR. GOLDMAN: I would prefer to offer some now.

THE COURT: Give the clerk the ones that you are offering now and state the numbers of them.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

MR. GOLDMAN: Your Honor, at this point may I call the Court's attention to paragraph 12 of the undisputed facts set forth in the pretrial order. Your Honor, shall I read that particular paragraph?

THE COURT: Absolutely not.

Please move along now. Let's get a witness on the stand.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

MR. GOLDMAN: I refer to paragraph 12 of the pretrial order relating to the purchase price of the transaction.

THE COURT: That is all in my record now, that pretrial order. You may offer any of the exhibits that have been stipulated to right now, if you like. If not, let's get a witness on here. Time is valuable.

MR. GOLDMAN: I would like to read from requests for admissions, your Honor, or at least identify which requests I'm relying on.

THE COURT: All right. If they are not covered in the pretrial order.

MR. GOLDMAN: They are not covered in the pretrial order. They are, however, admissions on file in the case.

Your Honor, I read paragraph 1 from the requests for admissions, which states, "The Zacharias Patent was issued upon application serial number 693,104 filed October 29, 1957."

The answer to that is admitted, your Honor.

THE COURT: As I understand it, it is admitted that this patent is invalid.

MR. GOLDMAN: That is correct, but may I suggest this, your Honor, that some of these admissions which go into what actually happened at that Overseas Press Club

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

conference are extremely important since Mr. Lerner attended it and we want the record to show precisely the extent of the operation at that Overseas Press Club conference.

Paragraph 4, your Honor, of the requests for admissions states, "At the time of filing of this Zacharias application, Messrs. Zacharias, Holloway and Grant were agents, and/or employess of the defendant, National Radio Company, Inc., AKA National Company, Inc., a Massachusetts corporation National Radio Company, Inc., and its predecessors and successors are hereinafter referred to collectively as National, and the Zacharias application was assigned to National."

That request was admitted.

MR CARR: I'm trying to make notes, your Honor, and I would appreciate if counsel would identify which admission he is referring to.

THE COURT: No. 4. As I understand it.

MR. GOLDMAN: That is correct.

THE COURT: I'm still looking in the Court's files for these answers but you may continue, if I find them in the meantime, I may simply mark them.

MR GOLDMAN: May I offer, your Honor, a set of the answers to look at?

THE COURT: I'm sure we can find the official file.

MR. GOLDMAN: All right. Next, your Honor, paragraph 7 of the request for admissions, "On October 3, 1956, National conducted a press conference at the Overseas Press Club, 35 East 39th Street, New York, New York, with respect to a product identified as the Atomichron Frequency Standard." That is also admitted.

Paragraph 8 of the request for admissions, "At the press conference conducted at the Overseas Press Club on October 3, 1956, National demonstrated the Atomichron Frequency Standard."

Next, your Honor, paragraph 22 of the requests for admissions, "Specifically more than one year prior to the filing date of the Zacharias application, ie prior to October 29, 1956, A, Atomichron serial numbers 1 and 2 were sold to the U. S. Air Force RAFD under contract number AF30(635) 3854.

Subparagraph B, Atomichron serial numbers 2 and 4 were sold to the Bureau of Ships under contract number NOBSR-72630(1718).

MR. SCHREIBER: Your Honor, may I suggest in view of the stipulation that for purposes of this case the patent may be deemed invalid?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

THE COURT: Well, you see, apparently counsel is relying on whatever he thinks the Court can draw from the dates considered in juxtaposition with the dates of the negotiations involving the sale of the Automichron and I would permit him to show us that but I don't see why we have to waste time. If I could put my hands on the official copy of the requests for admissions, if you will just simply give me the numbers that you want --

MR. GOLDMAN: I will give you the numbers, your Honor, yes.

THE COURT: Just state the numbers that you would like to have the Court deem part of this trial record.

MR. GOLDMAN: All right. Your Honor, then, in accordance with that request, I would like these further numbers to be deemed part of the trial record in this matter.

Paragraph 22-A through D of the requests for admissions and the response thereto.

Paragraph 34 of the requests for admissions, and the response thereto.

Paragraph 35 of the requests for admissions and the response thereto.

Paragraph 39 of the requests for admissions and the response thereto.

Paragraph 40 of the requests for admissions

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

and the response thereto.

Paragraph 46 of the requests and the response thereto.

Paragraph 47 and the response.

Paragraph 51 and the response.

Paragraph 52 of the response.

And Paragraph 53 of the response.

THE COURT: All right.

MR. GOLDMAN: Your Honor, I would now refer to -- well, does your Honor deem it unnecessary to refer to particular stipulated facts in the pretrial order.

THE COURT: Absolutely. The entire pretrial order is before me. If I make some rulings or make some statements which makes you conclude that I'm not fully familiar with it, of course, you may call it to my attention, but as far as completing the trial record here, let's get the proof in.

MR. GOLDMAN: All right, your Honor, the only other things I would like to do before putting on my witnesses are to read briefly several admissions from Mr. Lerner's depositions taken in this action which I think logically belong in the case at this time.

THE COURT: They are not part of the pretrial order or the admissions?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

MR. GOLDMAN: They are not.

THE COURT: You intend to call Mr. Lerner.

MR. GOLDMAN: I don't intend to call him but I believe I can read from his deposition as an admission.

MR. SCHREIBER: Mr. Lerner will be a witness, of course.

THE COURT: Not as part of the plaintiff's case, however. How long is it?

MR. GOLDMAN: Not more than five minutes, your Honor.

THE COURT: All right. State the page and line number.

MR. GOLDMAN: I will.

Your Honor, I first refer to Lerner's deposition of April 19, 1972, page 73, line 11 to line 16:

"Q Now, Mr. Lerner, were you an officer of National Company at the time that it undertook the development of Atomichron product line?

" Yes.

"Q What office did you hold?

"A Chairman of the board and treasurer."

Next, your Honor, the Lerner deposition of the same date, page 74, line 5 to line 10.

"Q You were chairman of the board of directors, you

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

say, at that time?

"A Yes.

"Q Were you also chairman of the executive committee, do you know?

"A Yes."

THE COURT: Has the original of this been filed and docketed?

MR. GOLDMAN: Your Honor, it has not. The parties have waived the filing of the transcript.

THE COURT: I don't care. Hand it to the clerk. The original ribbon copy. You can keep it until you finish with it but it is to be filed.

MR. GOLDMAN: All right. Your Honor, we shall file it.

THE COURT: All right.

MR. GOLDMAN: Your Honor, at this time I have no further requests and I will call my first witness.

THE COURT: Call your witness.

MR. GOLDMAN: Mr. Martin Bloch.

M A R T I N B L O C H, called as a witness by plaintiff, being first duly sworn, testified as follows:

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q Mr. Bloch, what is your business?

A I'm president and chairman of the board of Frequency Electronics, Incorporated.

Q How long have you been associated with Frequency Electronics?

A Since the inception of the company in 1961.

Q Are you a stockholder of Frequency Electroncis?

A Yes, I am.

Q Approximately what percentage of the outstanding stock do you own?

A 155,000 shares out of 700,000 outstanding.

Q Were you the founder of Frequency Electronics, Mr. Bloch?

A Yes.

Q When was it founded?

A In the latter part of 1961.

Q Is Frequency a public corporation?

A Yes, sir, it is.

Q When did it become a public corporation?

A Oh, I don't recall the exact date. I think sometime in the latter part of 1968.

Q Have you always owned at least 20 per cent of the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

stock of Frequency Electronics, Mr. Bloch?

A Yes.

Q Have you always been the largest stockholder of Frequency Electronics?

A To the best of my knowledge.

Q Can you describe for me what the business of Frequency Electronics is?

A Frequency Electronics makes a series of components, instruments and substances for communications, navigation and guidance systems. The systems are used for commercial satellites, such as Western Union, for guidance computers such as the Apollo, and for many of the guidance and control systems aboard atomic submarines and aircrafts.

Q Can you name some of the programs which Frequency Electronics has participated in, defense programs which you mention?

A We are basically a supporter of most of the key communication navigation and surveillance programs of the United States Navy and Air Force primarily, polarize weapons system, the Aegis system,the Fleet Satcon, and the GPS global positioning system, which we are presently involved in.

Q Mr. Bloch, are you actively involved in the business of Frequency on a day to day basis?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

A Yes, I am.

Q Would you describe what your responsibilities are?

A Basically from the conceptual need of a customer to the final execution of the product from taking a look at the engineering and scientific advisibility of a given product to assigning it to a program manager that will execute the day to day detail, and then I remain as a technical consultant to this program until the product is delivered and accepted by the customer.

My primary involvement is technical and I try to assign all administrative functions to other people.

Q Do you have overall supervisory responsibility, however, for administrative functions?

A Yes.

Q Would you describe briefly to the Court your educational background, Mr. Bloch?

A I am an electronic engineer, and I have pursued studies in atomic physics and mathematics, subsequently, and I've been involved in the Frequency and Time Control Symposium as a chairman, co-chairman or contributor of technical paper since 1957.

Q Do you have a degree from an institution of higher learning?

A CCNY.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

Q What is that degree?

A I believe it is called Bachelor's of electronic engineering.

Q Are you a member of any professional societies or professional organizations?

THE COURT: Won't the defendants concede his qualifications?

MR. CARR: Well, sir. Okay.

THE COURT: All right.

Q Mr. Bloch, did there come a time when you had a meeting with representatives of National Radio Company, Incorporated?

A Yes.

Q When was the first such meeting?

A It was in May of 1968 in Atlantic City where the Frequency and Time Control Annual Symposium is held.

Q With whom on behalf of National Radio Company did you meet?

A Frank Oddi, Ray Horner, there were two or three other individuals from the company present.

THE COURT: When was this?

THE WITNESS: In May 1968, your Honor.

Q Mr. Bloch, would you tell the Court what you said to Mr. Oddi and what he said to you, Mr. Oddi or

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

Mr. Horner?

A The conversation was about a six-hour session and I'll try to give the essence of it.

We basically discussed the atomic frequency product of the National Radio Company, their very strong and almost exclusive patent position that they hold in the industry, and their main difficulty that they have experienced in marketing the product, that it is a single product outside of their general communication radio systems that they were selling, and I expressed that it would be ideally suited in a company where frequency and time control products is their main goods which is Frequency Electronics business.

We only make frequency and time related products.

Q Did you tell Mr. Oddi that Frequency would be interested in considering the acquisition of the atomic product line?

A Yes.

Q Was there any discussion during that meeting, Mr. Bloch, of any other companies which were in the market of selling Atomichron frequency standards?

A Yes. Basically there was one major competitor in the field outstanding at that time, and that was Hewlett-Packard.

Q Did you say anything to Mr. Oddi or to any of the

other National representatives concerning the subject of Hewlett-Packard's market position in atomic frequency standards?

A Yes, I was thoroughly familiar with their product line in the industry, and I questioned Mr. Oddi why Hewlett-Packard is allowed to continue with their product line in lieu of the strong product line that National had. I was informed at that time that there was a letter or some document sent to Hewlett-Packard to stop the manufacture of the product.

Q Was the subject of any particular patent discussed with the National representatives that day?

A There is no question in my mind as there is only one patent of any value in building the atomic frequency standard and that is the one part of the Zacharias Patent.

Q Did the Zacharias Patent become the subject of discussions with Mr. Oddi that day or any of the other representatives?

A With the whole team of National, no question about it, because right on the face of the Hewlett-Packard instrument displays that the Zacharias Patent is being infringed upon. That is the second harmonic lock feature and the Hewlett-Packard equipment was exhibited at that symposium in an adjacent suite.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

THE COURT: You see, he's asking you what the discussion was.

A The discussion was about the Zacharias patent and the key feature of it that allows Hewlett-Packard to make commercially available the standard and take it out from a curiosity in the laboratory.

Q In discussing Hewlett-Packard's operation and the Zacharias patent, what was your discussion concerning the relationship between those two?

A I indicated that I was advised that action is being taken against Hewlett-Packard at that time.

Q You were advised by?

A By either Frank Oddi or Ray Horner or somebody else who was present at that time. I'm not sure.

MR. SCHREIBER: I must object, your Honor. The witness is testifying to a single conversation and now says he was advised. He hasn't indicated when or where or by whom.

THE COURT: My understanding is --

MR. SCHREIBER: There's no prior meeting with anybody at National.

THE COURT: My understanding is this is a May, 1968 conversation in Atlantic City where Mr. Oddi,

Mr. Horner and some other people whom he doesn't remember were there.

MR. SCHREIBER: That's correct. He says he was advised. Does he mean then and there.

THE COURT: You will have a chance to cross examine. Are you still giving us May, 1968?

THE WITNESS: Yes, that's what my understanding is, your Honor.

Q These were conversations at that one meeting we have described?

A Yes.

THE COURT: Who told you this, that you have just told us?

THE WITNESS: We were all sitting together and it is difficult for me to remember. There was a general discussion between me and about at least three to four people at the National conference.

Q Do you know what Mr. Oddi and Mr. Horner's positions at National Radio Company were at that time?

THE COURT: Hasn't that been agreed to here?

MR. GOLDMAN: I believe it has, your Honor. I believe for the sake of clarification it might be brought out.

THE COURT: They were duly authorized, as I understand it, that's not an issue here.

MR. GOLDMAN: Thank you, your Honor.

THE COURT: All right.

Q After your discussions with those representatives in that May, 1968 meeting, Mr. Bloch, did there come a time when you met with the defendant Mr. Louis Lerner?

A Yes, I met with Mr. Lerner.

Q Did you have more than one meeting with Mr. Lerner?

A Yes, I did.

Q Referring to the first meeting with Mr. Lerner, when was that?

A Some time within a couple of months of this May meeting in the summer, either late July, early August, some place in that span.

Q Where did you meet with Mr. Lerner?

A At Mr. Lerner's office in Manhattan.

Q What did you say to Mr. Lerner and what did Mr. Lerner say to you in that first meeting in the summer of 1968?

THE COURT: Any others present?

THE WITNESS: No. Just the two of us.

A The basic discussion was centered on Frequency's possible desire to purchase the atomic product line from the National Company. I also gave Mr. Lerner a rundown of Frequency Electronics and what we are doing in the field, in the frequency and time control.

Mr. Lerner expressed the possibility of acquiring Frequency Electronics, which I indicated was not for sale. And Mr. Lerner emphasized the importance and a very strong patent position that National holds on the atomic frequency product. This is about a summation of the discussion.

Q Mr. Bloch, was there any discussion in that meeting of Hewlett-Packard Corporation?

A I'm sure Hewlett-Packard, as the main competitor, was discussed specifically. They were discussed as a competitor and why National Company hasn't achieved their status in this equipment and why Hewlett-Packard is being allowed to continue to manufacture the product.

Q Did you ask Mr. Lerner anything about National's activities relative to Hewlett-Packard's position?

A YES. Mr. Lerner indicated to me that that product line and development and marketing has been

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

plagued by many changes in personnel and that a clear picture never materialized to really do what is necessary with the product line and with their patent position in the industry.

MR. SCHREIBER: I move to strike as not responsive, your Honor.

THE COURT: Why, because he said"indicated"?

MR. SCHREIBER: No, because he's not talking about the discussion of what they are doing about the patent line.

THE COURT: I will overrule it. I deny the motion.

Q Mr. Bloch, can you relate the statement which you just made which Mr. Lerner mentioned about the problems of National to Hewlett Packard in a more concise way?

A Well, if you would ask a specific question, I'll appreciate it.

THE COURT: Don't tell us what people indicated, if you can, just try to give us the substance of what they said.

THE WITNESS: I'm sorry. Okay.

THE COURT: People indicate by gesticulating, pointing, making faces perhaps, but when they talk, they

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

usually speak.

Q What effect, if any, did Mr. Lerner attribute the National problems as having on the Hewlett-Packard situation?

A Well, basically that National's patent position was that strong and with a coercive and continual management on the program, that they would produce a very good product and would be able to stop Hewlett-Packard from marketing theirs.

Q What was the significance of National's problems in dealing with that aspect of the situation?

A I was quite familiar because I have been involved with National's product line --

THE COURT: No. Did you ask him in words or substance why --

THE WITNESS: I'm sorry, your Honor.

THE COURT: -- why National hadn't estopped Hewlett-Packard from manufacturing this product?

THE WITNESS: Yes.

THE COURT: What did he say to you?

THE WITNESS: He said they have been plagued by continuous changes in personnel on the project from the beginning to this date. There wasn't a coercive management group that stayed with the product all

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

along so nobody had a clear picture of what action needs to be taken.

THE COURT: He said that prevented them from enforcing their patent against Hewlett?

THE WITNESS: That prevented them from taking action earlier.

THE COURT: Did you believe that?

THE WITNESS: Why not?

THE COURT: Go ahead.

Q Mr. Bloch, after that meeting with Mr. Lerner in the summer of 1968 did you have any meetings or discussions with any other representatives of National?

A Yes. We pursued and had a couple of meetings and phone conversations exploring the feasibility of frequency acquiring the atomic frequency -- the atomic line product.

Q Can you remember the names of any of the people you met with after that first meeting with Mr. Lerner?

A Most of the meetings were involved with Mr. Frank Oddi, Mr. Whitney Drake, Mr. Ray Horner, one of the technical men, I believe his name was John Over, and occasionally with Mr. Sweeney, I believe.

Q Where were these meetings held?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A They were held at National Company.

Q In the course of those meetings were you told anything with respect to National's intentions of consummating the sale of the product line?

A Yes.

Q What were you told?

A That National basically wants to sell the product line.

Q Was there any mention made during these meetings of the Zacharias patent?

A Definitely.

Q What was said about it?

A That the Zacharias patent is the key patent in this product line and that there's no question that with that patent they can stop Hewlett-Packard from marketing the product.

THE COURT: When and by whom was this?

THE WITNESS: These conversations, your Honor, were conducted at National and most of the time Mr. Whitney Drake, their counsel, Mr. Ray Horner and Mr.Frank Oddi were present.

There were also in and out people coming in as information was neeeded in the discussion.

Q Mr. Bloch, can you fix the time reference

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of these meetings?

A No. There were quite a few from, I would estimate, August through the closing of the contract.

Q Were you shown around the plant during these meetings, Mr. Bloch?

A At one of those meetings we went through the atomic frequency facility.

Q All right. Were there any discussions during those meetings about Frequnecy Electronics purchasing only patents and technology rather than fixed assets?

A Yes. That was our basic interest.

Q Did you inform National representatives that this was what Frequency wished to buy?

A Yes.

Q Can you tell me what the National response to that question, to that statement, was?

A The question was that they will not sell the patent alone, that they have decided to go out of the product line business and the only way they will make deal is if we buy everything.

Q Can you remember which of the National representatives said that to you, Mr. Bloch?

A It was all done this meeting where at least

three of these people -- I believe that statement was made -- I'm sure it was made by either Mr. Ray Horner or Frank Oddi.

Q All right. Now, during these meetings and your trips to Massachusetts, did you familiarize yourself with National's operations?

A To the extent of the atomic product line, yes.

Q Mr. Bloch, when did you first become familiar with the Zacharias patent?

A In detail, at least a year before we entered the negotiation with National Company.

Q Were you familiar with the Zacharias patent prior to the closing of the transaction with National Radio Company?

A Yes.

Q Are you familiar --

THE COURT: I don't know what you mean by familiar with it. He read of it, heard of it.

What was your familiarity?

THE WITNESS: Your Honor, I read it, I studied it, I compared the inventions with existing equipment, and I have the technical background to be able to evaluate the significance of that invention.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: All right.

Q Mr. Bloch, in fact did you read technical manuals on the subject?

A Yes.

Q And did you read the patent itself?

A Yes.

MR. GOLDMAN: Your Honor, I think I would like to introduce the patent as an exhibit.

THE COURT: All right. What number is it?

MR. GOLDMAN: It's Plaintiff's Exhibit No. 48.

THE COURT: It will be received in evidence.

(Plaintiff's Exhibit 48 was received in evidence.)

MR. CARR: Is that the entire file wrapper?

MR. GOLDMAN: That is only the patent.

MR. CARR: The patent itself.

MR. GOLDMAN: I can introduce and would like to introduce at this time, for the sake of convenience, the file wrapper, the entire file history of the patent.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: I suggest during your next recess you make a list; or perhaps you should go at it backwards: anything in the pretrial order that you don't want to introduce separate out and introduce the rest.

MR. GOLDMAN: Your Honor, I think we can make it brief. We don't at this time have intention to introduce most of the exhibits.

THE COURT: Introduce what you want and it will be done at one time.

MR. GOLDMAN: That is Plaintiff's 49.

(Plaintiff's Exhibit 49 was received in evidence.)

Q Mr. Bloch, could you explain to the court in general terms what the Zacharias invention is and what it does and how it is used commercially?

A The atomic frequency standard has been in development since early 1947-48, and it stayed as a laboratory curiosity as an atomic frequency standard, which is the most accurate way commercially now available of keeping time, and didn't go out of the laboratory because there was no way for the user to know if you are on the atomic resonance and if you have the accuracy.

That one part of Zacharias' patent, the

detection of the SECOND HARMONIC, has facilitated taking a laboratory curiosity instrument --

THE COURT: Which claim number is that?

THE WITNESS: I believe --

MR. EBENSTEIN: I believe it is 3 and 8, your Honor. I don't believe the witness would know that.

THE WITNESS: I think it's 3 and 8.

THE COURT: Go ahead.

A It facilitated taking the instrument from a laboratory curiosity and putting it in for commercial use by observatories and navigational systems aboard ships because for the first time you not only have an instrument that makes the most precise time but the user can tell if it is on lock. And it is a key to the commercial use of the instrument as the light and the tell is to a telephone. It just -- it's okay to have a telephone but if you can't hear when somebody calls you it can't be commercially utilized. That is what the SECOND HARMONIC has done to the atomic frequency standard.

Q Are you familiar with commercial products sold by utilizing the Zachary invention, the SECOND HARMONIC, Mr. Bloch?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes. As a matter of fact, to my knowledge, every atomic standard that has been built either for commercial use or for use for the Bureau of Standards, national and international uses the SECOND HARMONIC a an indication of lock.

THE COURT: Is this true as of February 3, 1969?

THE WITNESS: It's true as of today, your Honor.

THE COURT: All right.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you know whether it was true as of that time also, Mr. Bloch?

A Absolutely. You don't know of any atomic frequency standards that have ever been sold that didn't utilize the SECOND HARMONIC detector?

A No.

Q Now, how does the device of the atomic frequency standard containing this invention compare with the accuracy of devices or with the accuracy of other frequency standards that were previously manufactured?

A Well, all previous frequency standards were man-made devices and had the inaccuracies of a man-made device, and they continuously change as a function of time so they cannot be used as an absolute standard.

The cesium beam was the first time and frequency standard which was absolute because we synchronized ourselves to the transition of the cesium atom, which was, of course, basic in nature, and it does not get influenced by man's modifications to the device. It became the first absolute standard, which is now internationally accepted as scale for frequency and time.

Prior to this the only other absolute

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

eba2 Bloch-direct

standard was the standard of the rotation of the earth with respect to the sun, which was almost a standard but not as accurate as the atomic standard.

Q Mr. Bloch, have you sold the atomic frequency standard as a product of Frequency Electronics?

A Yes. We made about 20 to 30 instruments and sold them.

Q That is after the acquisition from National, is that correct?

A Yes.

Q And it contained the SECOND HARMONIC invention?

A Absolutely.

Q Mr. Bloch, did there come a time when you had a second meeting with Mr. Lerner after that meeting of the summer of '68?

A Yes. I had a second meeting some time between the summer and the end of November. I was dealing with the people at National and the deal was just getting bogged down. They were sitting at our lawyer's office, and we both agreed, me and Mr. Gideon Cashman, that it would be best if he arranged another meeting between me and Mr. Louis Lerner to discuss and to see if we can cut through the deal, because in all my

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

negotiations with the National Company personnel it was made clear that no deal, no decision will be made without Mr. Louis Lerner's approval.

Q And where was the second meeting with Mr. Lerner held?

A It was held at the offices of Mr. Lerner in Manhattan.

Q Who was present besides yourself and Mr. Lerner?

A Mr. Gideon Cashman of Pryor & Cashman.

Q What did you say to Mr. Lerner and what did he say to you at that second meeting?

A Basically that second meeting was short and pretty vague to me.

THE COURT: Just tell us what was said?

THE WITNESS: I don't remember, your Honor. We just discussed how we can consummate a deal more expeditiously. That was the essence of the discussion.

Q Do you remember if there was any discussion of price at that meeting?

A Yes. We discussed the price to the tune of approximately $700,000 to purchase the device.

Q Did you discuss with Mr. Lerner at that

meeting anything concerning the Zacharias patent?

A I don't recall.

Q Did you discuss with Mr. Lerner anything concerning a potential patent infringement which Frequency Electronics would bring against Hewlett-Packard after it purchased the product line?

A I discussed it with Mr. Lerner. I don't remember if it was on the second or on the third meeting that we met.

Q Well, whenever it might have been, what was the discussion on that subject?

A Well, basically that part of the agreement, when Mr. Lerner indicated, and also Mr. Frank Oddi, that the action that they have already started, and Frequency will continue, the success of stopping Hewlett-Packard's manufacturing or the collecting of a royalty on a licensing engagement would be shared between Frequency and National Company.

Q Mr. Bloch, you said something about the action already started. Was it your understanding before the consummation of the transaction that National Radio Company had actually sued Hewlett-Packard?

A I don't know what you mean by sued but it

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

was my clear understanding, both from the meeting in Atlantic City and the subsequent meeting at National Company, that a letter was sent by National Company to Hewlett-Packard to ask them to stop the manufacturing of the equipment because they are infringing on the Zacharias patent.

Q Yes. When I talked about an action, I am talking about if there had actually commenced a formal court proceeding.

A Yes.

Q It was your understanding that they had --

A It was my understanding that this has been initiated by National Company against Hewlett-Packard.

MR. SCHREIBER: Your Honor, may I ask who told him this and when?

THE COURT: You will have a chance to cross examine. Of course the question is objectionable. He was asked what they said to him that gave rise to this understanding and how did he reach this understanding.

Q Mr. Bloch, I adopt the cour's series of questions and I would ask you to state again who told you about an action --

THE COURT: A lawsuit?

Q -- or a lawsuit being brought against Hewlett-Packard.

A I first was told by either Mr. Frank Oddi or Ray Horner at Atlantic City and I subsequently was told or saw a letter, and I can't be sure of that, on one of the visits, the National Company, at which Mr.Whitney Drake, Ray Horner and Frank Oddi were present, that a letter was sent to stop the manufacturing of the equipment.

Q Well, Mr. Bloch, I want to clarify this question of a letter being sent as opposed to a lawsuit being started.

Did you learn from anyone at National during the period before the agreement was signed that a lawsuit was started as opposed to a letter being sent?

A No. I was specifically told that a letter was sent to stop the manufacturing of the equipment.

Q And nobody told you that a lawsuit had yet been started?

A No.

Q Now you say during that second meeting or during one of the meetings with Mr. Lerner you did discuss this question of Frequency Electronics taking

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

over or starting its own lawsuit after the deal, is that correct?

A Yes,"continuing with the action" is the exact words used.

Q And in fact is there a provision in the purchase and sale agreement, Plaintiff's Exhibit 1, which accords with your understanding of what was to happen after the deal was closed?

A It's quite clear in my mind. We were going to share 50-50 in all our proceeds.

Q And would you just briefly identify for the court what provision of the agreement it is?

THE COURT: You can call my attention to it. Put the agreement in evidence.

MR. GOLDMAN: The agreement is in, your Honor.

A I don't remember which particular paragraph?

THE COURT: If it's in evidence I don't need testimony.

MR. GOLDMAN: It's paragraph 8 of the agreement.

A NCR cause of action.

Q Now, Mr. Bloch, after your second meeting with Mr. Lerner, did you have occasion to go to

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

National Radio Company's plant in Massachusetts again?

A Yes, quite a few times.

Q And did you go to National's plant some time in November of 1968?

A Yes.

Q And did you have meetings and discussions with representatives of National?

A Yes.

THE COURT: Where is this plant located?

THE WITNESS: It's either Malden or Melrose, Massachusetts.

Q And can you tell me which representatives of National you met with?

A In all cases, with Mr. Whitney Drake, Ray Horner, most of the time Mr. Frank Oddi was present, and a few other people kept on waltzing in and out of all of those meetings.

Q Did the subject of the Zacharias patent and Hewlett-Packard's activities come up in those meetings?

A Yes.

Q And in particular, at a meeting about November of '68?

A In Early November, right.

Q And what did you say to National's repre-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

sentatives and what did they say to you concerning that subject of Hewlett-Packard?

A I asked that the file be turned over to Frequency Electronics so we can prepare ourselves and be more familiar with it because at the present time we plan to consummate a deal some time before the end of the year. That was in 1968.

And I was told that it is going to be forwarded to me but I never received it.

Q Now, you referred to a file. Was there any particular document that was referred to or mentioned by National representatives as being part of this filed material which would be sent to you?

A The specific document of great interest to me was that letter to Hewlett Packard.

Q Now, you say that letter to Hewlett-Packard. Would you describe which letter it is that you were told about?

A The letter that I was told of, or physically saw, and I really can't recollect, said for Hewlett-Packard to cease and desist the manufacturing of their atomic frequency apparatus.

Q And do you have a recollection of being told at the present time that any particular patent was men-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

tioned in that cease-and-desist letter?

A In all of the conversation it was clear that the key patent to give anybody an advantageous position in the industry was the Zacharias patent.

I mean one position of the Zacharias patent.

Q That is the one you described as the SECOND HARMONIC?

A Yes.

Q Did you ask them if they had received any response to this cease-and-desist letter which was supposed to have been sent to you?

A Yes. I didn't get a clear answer that it's being handled and they don't know any of the details and they will make the details available upon the conclusion of the purchase when they turn over all the files and drawings on Atomichron.

Q Now, Mr. Block, after the meeting at which reference was made to that letter did you have another, which would be a third meeting, with Mr. Lerner?

A Yes. I came back to New York and was very leery about two aspects. No. 1, that the information doesn't flow freely to Frequency Electronics, and that I cannot see the advisability of what is happening in that Zacharias patent infringement, and I called Mr.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Lerner and arranged a meeting for some time late in November or early December.

Q You arranged a meeting with Mr. Lerner?

A Yes.

Q Did you call him on the telephone?

A Yes, I did.

Q What did you tell him on the telephone?

A Exactly that I feel leery about the patent position and having clear visibility of information to Frequency Electronics, that we should meet to resolve it so we can proceed with the deal.

Q In fact, you then proceeded to meet with Mr. Lerner?

A Yes. There was a meeting some time towards the end of November or early December.

Q Where was that meeting held?

A At Mr. Lerner's office, again in Manhattan.

Q And was anyone present besides yourself and Mr. Lerner?

A Yes. Mr. Frank Oddi was also present at the time.

Q And what did you say to Mr. Lerner and to Mr. Oddi and what did they say to you at that meeting?

A I expressed my reservations about the free

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

flow of documents of Frequency since we were in the last stages of hammering out the deal, and that I am very concerned about the patent position. Is there anything that National is trying to hide,because they are restricting that flow of information to Frequency Electronics.

Q And what did Mr. Lerner or Mr. Oddi say or do?

A Either Mr. Lerner or Mr. Oddi, during that meeting -- by the way, the fixing of the meeting and the date, it was set for a time when Mr. Oddi would be in New York for one of the monthly executive meetings anyway, as comes back to my recollection. That's why the date was set.

I was handed a memorandum prepared by the patent attorney outlining the strength of National's patent position.

Q Mr. Block, I hand you Plaintiff's Exhibit 46 and I ask you if this is a copy of the memorandum that you received.

A Yes. This is what was handed to me at that meeting.

THE COURT: Are you offering it?

MR. GOLDMAN: Yes, your Honor.

(Plaintiff's Exhibit 46 was received in evidence.)

THE COURT: Any objection?

MR. SCHREIBER: I do, your Honor.

THE COURT: State your objection.

MR. SCHREIBER: He hasn't said who gave it to him.

MR. GOLDMAN: He has, sir.

THE COURT: I understood him to say it was given to him either by Mr. Oddi or Mr. Lerner, and that if Mr. Oddi gave it to him it was at a meeting where Mr. Lerner was present.

Is that correct?

THE WITNESS: Yes, your Honor.

MR. SCHREIBER: I will not object to the document at this time.

THE COURT: It will be received in evidence.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Now, Mr. Bloch, what did you do after you got that memorandum?

A I read it because I was very worried --

THE COURT: Just tell us what you did.

A I read it. I discussed it, and I was very much relieved that they have done a great deal of homework in outlining their patent position by their patent attorneys.

Q Mr. Bloch, after that meeting with Mr. Lerner and receiving that memorandum, and reading that memorandum, did you authorize Frequency Electronics to execute the purchase and sale agreement, Plaintiff's Exhibit 1?

A I recommended to the board of directors to approve, to proceed with the purchase of --

Q Did the board approve it?

A Yes, it did.

Q And in fact the purchase and sale agreement was signed, is that correct?

A Yes, I believe on February 3, 1969.

Q Would Frequency have consummated the purchase and sale agreement, would it have purchased the Atomichron line from National, had you known that the Zacharias patent was null and void?

MR. SCHREIBER: Objection, your Honor.

MR. GOLDMAN: Your Honor, I think it is very material. We have to show, I believe --

THE COURT: You have to show facts which would permit the court to draw that inference, don't you? Isn't that the final question in this case?

MR. GOLDMAN: Obviously the determination is for your Honor, but I think that the plaintiff's reliance --

THE COURT: He can tell us whether he was relying on anything and, if so, what, or what he would have done if he would have known otherwise. I think that is asking him the ultimate question, isn't it, which after July 1st you can do here?

Q Mr. Bloch, did you rely on that memorandum, Plaintiff's Exhibit 49, in recommending to the board --

THE COURT: 46.

MR. GOLDMAN: 46. Excuse me.

Q -- in recommending to the board that it approve the purchase and sale transaction.

A Basically, one main aspect of the memorandum, and that is the Zacharias patent and Hewlett-Packard's infringement. Without that particular patent protection, Frequency could in no way successfully compete against a company like Hewlett-Packard. That is approximately

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

100 times our size.

THE COURT: This device you made that you said you had sold 20 or 30 of, is that the same device which Hewlett-Packard is making?

THE WITNESS: Similar, your Honor. The same technology but a different package. It used a cesium beam atomic resonance, and it used a SECOND HARMONIC block.

THE COURT: What is the end use of your product?

THE WITNESS: The same as Hewlett-Packard's: for radio, astronomy and navigation aboard ships.

THE COURT: How did your product differ from Hewlett's?

THE WITNESS: It was smaller in size, more compact, and used a citcuitry of a later nature, because developed their product in 1963 and 1964 and we developed our product in 1969, basically with new components and modular construction which we considered was of major importance for industrial use and maintenance of the equipment.

Q Mr. Bloch, do you recognize the name of Clarence Lyon?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Did you know who Mr. Lyon was at or about February 3, 1969?

A Yes.

Q Who was he?

A He was a member of the firm that did most of the patent work for National Company.

Q Did you call Mr. Lyon on the telephone some time after February 3, 1969?

A Yes.

Q Approximately when?

A I would estimate it within three to four months after the purchase.

Q What did you say to Mr. Lyon?

A I wanted him to pursue the action against Newlett Packard since it was clear to me from my own examination, and by the people at National, that they were the people most familiar with the case and with the patent.

Q When you say "they," whom do you mean?

A Mr. Clarence Lyon's firm, specifically Mr. Clarence Lyon, who handled the basic patent originally, I believe.

Q Did you ask Mr. Lyon to represent Frequency Electronics?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes.

Q What did he say?

A He said he would be happy to if there is no objection from the National Company, and he got back to me very shortly and said that he has their blessing and proceeded to pursue the Hewlett-Packard matter.

Q And in fact did you retain Mr. Lyon at some time, or his firm, to bring an action against Hewlett-Packard Corporation?

A Yes. I think the actual retainer was done through the firm of Pryor, Cashman.

Q What did you first tell Mr. Lyon to do after he agreed to work for you?

A To take a summary of what has been done against Hewlett-Packard in the past, to take a look at the file and the exact specificality of the infringement and to do what's necessary to either stop Hewlett-Packard from manufacturing or to work out a license agreement.

Q In fact, did you authorize Mr. Lyon to write a letter to Hewlett-Packard so stating?

A Through your firm, through the firm of Pryor, yes.

Q And were you advised that such a letter was

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

sent?

A It took some time but it was eventyally sent, yes.

Q And were you advised that a response had been received back from Hewlett-Packard?

A Yes. I was advised some time in September or October of 1970 of a response from Hewlett-Packard and subsequently obtained a copy either through Mr. Lyon or through Mr. Gideon Cashman at Pryor, Cashman.

Q What was the substance of the Hewlett-Packard response, if you can remember it?

A It was simply to the point. The patent is not valid due to prior use and sale of the equipment.

Q Do you remember if the response referred to the Overseas Press Club meeting?

A Yes, and to the sale of the equipment to the Naval Research Laboratory and to the Air Force.

Q After you were advised of the Hewlett-Packard response did you ask Mr. Lyon to do anything more?

A Yes.

Q What did you ask him to do?

A I asked him to make absolutely sure and to write me a final understanding of our patent position

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

on this key patent because we had to make some major decisions based on the validity or nonvalidity of this patent.

Mr. Lyon said that he would do that, he went through a search of their files and whatever else is necessary, "I'm not clear on the details, and got a letter from him some time around the middle of March, 1971 stating that to the best of his appraisal Hewlett-Packard is right and the patent is not valid.

Q For the reason?

A Of prior use and sale.

THE COURT: You were informed of this in March of '71?

THE WITNESS: Yes, I believe March 17th, to be exact.

MR. SCHREIBER: Your Honor, the letter is here and speaks for itself. I move to strike it.

THE COURT: I understood there was an objection to the letter. The letter has not yet been offered.

MR. SCHREIBER: The Clarence Lyon opinion.

THE COURT: Which number is that? Which letter is that?

MR. GOLDMAN: That is 47, your Honor.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: You see, as I understand from the pretrial order, there is an objection to that and it has not yet been offered. The only thing I would take it for would be the date.

MR. GOLDMAN: Your Honor, I don't think it is necessary really. The date is stipulated.

THE COURT: The witness has said that he learned on March, 17, 1971 that Hewlett-Packard had rejected it.

MR. SCHREIBER: Would you just put that date in the record, please?

MR. GOLDMAN: March 17, 1971.

THE COURT: All right.

BY MR. GOLDMAN:

Q Now, after Mr. Lyon evaluated the Hewlett-Packard position and came back with its conclusion that they were correct, what did you do, Mr. Bloch?

A Well, viewing the importance of such a discovery --

THE COURT: Please don't make a speech.

THE WITNESS: I'm sorry, your Honor.

A I hired another patent attorney to make absolutely sure that Mr. Lyon's conclusion wasdefinite and I at that time engaged the firm of Amster & Rothstein,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

gave them all the files and the investigation of articles that we had done at Frequency Electronics so they can have a good way of evaluating or confirming or contradicting Mr. Lyon's decision.

Q Did Amster & Rothstein at some point reach a conclusion as to Mr. Lyon's evaluatin and, in fact, Hewlett-Packard's position?

A Yes. I was told by Mr. Mort Amster some time in the middle of April, 1971, and he said that he has, without any question, confirmed Hewlett-Packard's and Mr. Lyon's position that the patent is not valid due to prior use and sale.

Q Now, after that, Mr. Bloch, did you make a recommendation to the board of directors of Frequency Electronics in about May, 1971 concerning Frequency's Atomichron operations?

A Yes.

Q What was your recommendation?

A That without patent protection we must cease any further manufacturing of the atomic clock and discontinue all the work.

Q Now, Mr. Bloch, can you tell the court, please, what the factors were that went into your recommendation?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Before you get to that, when did he make his last payment?

MR. GOLDMAN: The last payment on the note, your Honor.

THE COURT: Yes.

MR. GOLDMAN: The last payment on the note was made February 3, 1971.

THE COURT: The March 3rd payment was not made.

MR. GOLDMAN: There was no March 1st payment, your Honor. There were annual payments.

THE COURT: Oh, I see.

MR. GOLDMAN: They were due on February 3rd of each year.

THE COURT: All right, go ahead.

THE WITNESS: I remember the question.

A There were many factors that went into making my recommendation and decision. We at that time exhausted the first manufacturing of the cesium beam too. You have to manufacture this in lots of 20 or 30. And we had to commit a significant amount of additional funds in the vicinity of a quarter of a million dollars to make the next 30 apparatuses.

With the discovery that we don't have patents,

patent protection, and that we cannot either stop Hewlett-Packard or get royalties from them, which we counted on from the initial composition, and with the cash flow problems being very tight at Frequency Electronics, I made the recommendation that this was the best for the company. We cannot risk at this time the figure of the company without this patent protection and we have to channel our reosurces to actually tive us survivability in our high-technology field.

Q In fact, did the board of directors of Frequency vote to terminate the Atomichron product line?

A Yes.

Q Now, Mr. Block, did you advise your attorneys to do anything further after that?

A (No response.)

Q That is going back to Mr. Amster's opinion to you in April that the patent was void, and your termination of operations in May. What happened after that?

A I asked Mr. Amster to write a summary memorandum so I would have it for my record and this was delivered to me subsequently, within a short period of time.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q And you authorized your attorneys to proceed to institute an action, is that correct?

A I believe it followed subsequent to that memorandum, yes.

Q Now, Mr. Bloch, do you know what the amount of the writeoff of Frequency's loss due to Atomichron operations was?

A Approximately 2.1 million.

Q Mr. Bloch, do you know how many Hewlett-Packard frequency standards have been sold?

A I have a good count until about February of 1975 and it is in excess of 1700.

THE COURT: 1700?

THE WITNESS: Yes, sir.

Q And that covers what period of time, Mr. Bloch?

A '63 to February of '75.

Q So that from 1963 to February of '75 there were approximately 1700 Atomichrons sold by Hewlett-Packard?

A Yes.

Q To your knowledge, they all incorporated the SECOND HARMONIC invention?

A Absolutely. I have personally examined

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

all the three models that Hewlett-Packard manufactures and you can see right on the face of the equipment where the SECOND HARMONIC block is the key feature of that instrument to show that it is operating.

Q Now, Mr. Bloch, you said that Hewlett-Packard has sold 1700, approximately, such products. What is the basis for your knowledge of that?

A Well, I have seen a lot of them, and also it is customary in the high-precision frequency and high-control industry, and also the procedures of government and high-precision users to serialize the equipment in one of two ways: either to serialize and give the date of manufacture or to serialize them by model numbers from 1 up to the final model of the manufacturer, and I have personally kept track of the three models that Hewlett-Packard manufactured: the Model 5060A, of which the last serial number, before they discontinued, was 713; Model No. 5061A, of which I worked on equipment at the Naval Research Laboratory on serial No. 888 and we are now being delivered, for some of our experiments, serial No. 924; and on Model 5062C, which is an airborne version, serial No. 51 was in February delivered to the Naval Research Laboratory for their global positioning system. The abbreviation is GPS.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

dhrf 4a pm Bloch-direct

Q You testified to this identification by serial number reference, Mr. Bloch. Would you tell the Court why this is done?

A This is --

THE COURT: If it is commonplace, it doesn't really matter why, does it?

MR. GOLDMAN: In case there was a question.

THE COURT: How many of those were manufactured prior to 1969, the winter of '69?

MR. GOLDMAN: Your Honor, there was an assignment, as you know, in the agreement of infringement rights for prior infringement.

THE COURT: All right.

THE WITNESS: For your Honor's information, I would estimate about 600 of them.

Q Mr. Bloch, does Frequency follow this same procedure with identification of its products?

A Yes.

Q Do you know the cu-rent sales price of the current Hewlett-Packard frequency standard?

A Yes.

Q Would you tell us what it is?

A They are making again the 19 -- the fifth model, 5060A has been discontinued and replaced by

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

model 5061, which sells for $18,950 without any of their option, the basic equipment. And the model 5062C, which is the airborne version, sells for $16,850.

Q Do you have knowledge, Mr. Bloch, of the price range of Hewlett-Packard's frequency standards beginning in approximately 1963 when you testified they started marketing the product?

A Yes. I have kept track through the time of this equipment because it was such a parallel frequency standard to our own product line, and they varied with very few exceptions between 15 and $22,000 per equipment.

Q Even as far back as 1963?

A They were more expensive in 1963.

Q Mr. Bloch, have you ever been involved in negotiations for patent royalties on frequency related devices?

A On instruments for frequency measurement, yes, both as my position as chief engineer of Bulova Watch Company, and at Frequency Electronics.

Q About how many such negotiations were you involved in?

A Many.

Q Is there a normal range for royalties payable on licenses for such a product as the Atomichron frequency

standard?

A Yes. Five to ten per cent depending on the importance of the invention. As a matter of fact, that's the exact royalty we agreed to pay National Company on the sale of their Atomichron, five per cent.

Q Given the importance, as you have described it, Mr. Bloch, of the Zacharias Patent, what would have been a reasonable license for Frequency Electronics to have received from the Hewlett-Packard for giving it a license in connection with the SECOND HARMONIC device?

MR. SCHREIBER: I will object to that.

THE COURT: It doesn't appear on this record whether there are other patents which are licensed in connection with this device. Is that an assumption made in your question, that there are no other patents concerned in Hewlett-Packard's device?

MR. GOLDMAN: That there are no other patents as to which Hewlett-Packard would be alleged to have infringed? That is our assumption.

THE COURT: As to which they must pay a royalty or their equivalent?

MR. GOLDMAN: That is correct, your Honor.

THE COURT: If that is the contention, you better bring it out, if this witness knows.

dhrf 4 Bloch-direct

Q Mr. Bloch, do you know?

A Yes, your Honor. There are no other patents that Hewlett-Packard has to pay any royalties on this equipment.

THE COURT: I will overrule the objection.

MR. GOLDMAN: I'm sorry, your Honor?

THE COURT: I will overrule the objection in that case.

THE WITNESS: Then it would be customary for us to ask ten and to settle for five per cent of the full equipment selling price.

THE COURT: How much of that would you have to pay the vendors?

THE WITNESS: We had an agreement with Zacharias to pay him a royalty based on sales and I don't recall, your Honor, the exact royalty, but when we bought the equipment from National, the Zacharias payment of royalty was going to continue by Frequency Electronics.

THE COURT: So that would come out of the five per cent?

THE WITNESS: Yes, I believe it was either one or two per cent to the inventor. I believe it was one. It is a record. It is part of our records.

MR. GOLDMAN: I have no further questions of Mr.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 791-1020

dhrf 5 Bloch-direct

Bloch, your Honor.

THE COURT: All right. You may cross examine.

MR. SCHREIBER: May I have just five minutes, your Honor?

THE COURT: We will have a five minute recess.

(Recess.)

CROSS EXAMINATION

BY MR. SCHREIBER:

Q Mr. Bloch, I believe that you said that you had been studying the Zacharias Patent for about a year before that Atlantic City meeting.

A Yes.

Q You had received a copy of the patent prior to that time?

A I had it.

Q Do you remember where you got it?

A Yes. We were considering --

THE COURT: No, just where. Just answer the question. Where did you get it?

THE WITNESS: I don't remember exactly, your Honor. It was given to me --

THE COURT: Did you get it from these defendants?

THE WITNESS: No, no.

Q Where did you get it?

A I believe it was obtained for me by Noel Clark, one of the people -- an ex-employee of National Company at that time.

Q Did you ever ask Clarence Lyon for a copy of that Zacharias Patent?

A Not at that time.

Q At any time.

A I might have. Either Mr. Lyon or Mr. Whitney Drake, either one.

Q Is it not a fact that Mr. Clarence Lyon sent you a copy of that Zacharias Patent during the time you were negotiating to buy the Atomichron patent line?

A I have gotten some patents. I believe they came to me through Mr. Whitney Drake.

Q I'm not speaking of some patents, Mr. Bloch, I'm talking of the Zacharias Patent. Didn't you on the telephone request Mr. Lyon to send you a copy of the Zacharias Patent?

A It is quite possible.

MR. GOLDMAN: At what time?

Q During the period of the negotiations for the Atomichron line.

A Mr. Schreiber, I got no direct mailing from Clarence Lyon. If I requested it, I'm sure that it came through Whitney Drake at National Company.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

Q Did you by telephone request Clarence Lyon to send you a copy of the Zacharias patent at the time you were negotiating for the Atomichron line?

A Probably.

Q Why did you need another copy if you had one and had been studying it for a year before the May, 1968 meeting?

A Because that was a year before and I couldn't locate it.

Q But you are sure you had one a year before May, 1968?

A I saw a year before a patent, yes.

Q You saw it and had it and studied it?

A Yes.

Q But then you misplaced and you got another copy from Clarence Lyon?

A No. You are paraphrasing me, Mr. Schreiber. I requested a copy from Clarence Lyon with Whitney Drake's permission. I got no mailings from Clarence Lyon directly at all.

Q I didn't ask you whether you got your mailings directly, Mr. Bloch. I asked you if you requested a copy from Clarence Lyon.

A That is not what you said, Mr. Schreiber.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Don't argue, please. Just answer the question.

A Yes, I requested it.

Q Let's get back to the May, 1968 meeting at Atlantic City. What convention was that?

A That's the Frequency and Time Control Symposium.

Q Was Hewlett-Packard represented there?

A Yes.

Q Did they show their device there?

A Yes.

Q Did you see their device there?

A Yes.

Q Did Mr. Horner accompany you in looking at the Hewlett-Packard device?

A I don't recall. I don't think so.

Q You said you met with Mr. Oddi and Mr. Horner and several others at Atlantic City?

A Yes.

Q Do you recall that quite definitely?

A I recall Mr. Oddi -- I would stake my life on Mr. Oddi. I had long discussions with him.

Q Now, you testified under oath a little while ago, Mr. Block, that you met with Mr. Oddi, Mr. Horner

and two or three others in May, 1968. Is that still your recollection?

A Yes.

Q Where did you meet with them?

A The National Company had a hospitality suite at, I believe it was, the Shelbourne Hotel in Atlantic City.

Q At the Shelbourne Hotel. Mr. Oddi and Mr. Horner and two or three others from National Company were there?

A Yes.

Q Tell me what Mr. Oddi said to you there at that meeting?

A I had testified, Mr. Schreiber, that the discussion was in a group discussion that went on for approximately six hours.

Q About six hours, in the hospitality suite?

A Yes.

Q Between what hours of these six hours, at night?

A It was in late afternoon and into night.

Q Did you break for dinner?

A I don't believe so.

Q Was Mr. Oddi there throughout that six- or

eight-hour discussion?

A To the best of my recollection, most of the time.

Q And Mr. Horner too?

A All of the people from National were there, in or out, on an intermittentmost basis. I would give an estimate that 90 per cent, everybody was present in the room.

MR. SCHREIBER: May I ask the question be read back to the witnesss?

THE COURT: No. Frame another question.

Q Was Mr. Horner there throughout that meeting?

A I don'r recall. I didn't watch every individual there. Like I said, there were four or five people from National Company present there at various times.

Q Mr. Horner was there through much of the meeting?

A I believe so.

Q Can you tell me anything that Mr. Horner said to you in Atlantic City, May, 1968?

A I could tell you what was discussed in unison, not what each specific individual indicated.

Q I would like to know what was discussed in the presence of Mr. Horner at that time.

A Could you please --

Q What was discussed in this group of people while Mr. Horner was present?

A The discussion was on National's packing position, the description of the apparatus and that they have stopped -- that they have sent a letter or a document to Hewlett-Packard to stop the manufacturing, because one of the key discussions was the competitive position in the industry and where Hewlett-Packard stood primarily as the prime competitor of the equipment.

Q Do you recall anything that Mr. Horner said?

A No. I have very vague familiarity with Mr. Horner. I have never met him before that time and a few times subsequent to that.

Q Do you know when Mr. Horner was first employed by National Coimpany?

A I haven't got the vaguest idea, sir.

Q We will come back to that, Mr. Bloch.

THE COURT: Don't make speeches for the record. Ask another question.

MR. SCHREIBER: All right, sir.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q At this first meeting with Mr. Lerner that took place in his office, how did that come about, Mr. Bloch?

A I believe the meeting was arranged by Gideon Cashman for me.

Q Was Gideon Cashman then attorney for Frequency?

A The firm was, not Mr. Cashman.

Q But his firm was?

A Yes.

Q Do you know whether Mr. Cashman or his firm represented MR. Lerner or any of Mr. Lerner's companies at that time?

MR. GOLDMAN: Your Honor, we will stipulate --

THE COURT: Overruled.

MR. GOLDMAN: We will stipulate that Mr. Cashman's firm had done some work for a company by the name of Official Industries of which we understand Mr. Lerner was a stockholder.

THE COURT: The question was whether he knew.

Did you know that?

THE WITNESS: I'm not sure, your Honor. I did by the second meeting.

Q Did Mr. Lerner tell you what his background in the patents was at that first meeting?

A No.

Q Did you ask him whether he knew anything about patents or the legal or engineering end of the patents?

A No. He talked quite knowledgeably about the -- National's product line.

Q About National's product line or about patents?

A About National product lines and their patent position on Atomichron.

Q What did he say exactly about the National Company's position, patent position, in the Atomichron line?

A That they have a very strong position and the reason they haven't stopped Hewlett-Packard from manufacturing is because the project has been plaged by poor and changing management.

Q Who first mentioned that Hewlett-Packard was doing anything that would impinge upon the patent position of National?

A At the meeting with Mr. Lerner?

Q Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I don't recall. It could have been me or Mr. Lerner. I have no recollection.

t5a

Q Did you know at that time whether or not Hewlett-Packard was producing atomic frequency standards?

A Could you please repeat that.

Q Did you know at the time of your first meeting with Mr. Lerner whether Hewlett-Packard was producing a product competitive with the Atomichron?

A Yes.

Q How long had you known that?

A Definitely since 1965.

Q At that time didyou know how many they had been producing?

A I had a rough idea, yes.

Q What was that rough idea?

A Between five and six hundred equipments have been delivered until that date.

Q Did you know at that time how many National Company had delivered up to that date?

A No.

Q Did you ask Mr. Lerner?

A I don't believe I did.

Q Did you know which was the larger producer and distributor of these standards?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes.

Q Which was it?

A Hewlett-Packard.

Q Hewlett-Packard?

A Yes.

Q Have you any idea at that time the proportion between the production of Hewlett-Packard as against that of National?

A No.

Q Would you say it was four or five times as many?

A Probalby.

Q And even more?

A I have no idea, Mr. Schreiber.

Q In your discussions with Mr. Lerner, did he offer any other excuse as to why National was permitting Hewlett-Packard to outproduce them at least five to one by infringing their patents?

A No.

Q Did you ask him what specifically he was doing about it?

A No. I might have asked him what he was doing about it. I don't remember any answer, if I did ask him.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q You didn't press for an answer, if you did ask him?

A No.

Q Did he show you anything to indicate what they were doing about Hewlett-Packard?

A No.

Q On your direct testimony you mentioned something about a letter that you recall seeing or hearing about addressed to Hewlett-Packard and asking them, as you termed it, to cease and desist. Did Mr. Lerner show you that at that meeting?

A No.

Q Did you ever see a copy of that letter?

A I testified that I either was specifically told by either Frank Oddi or Whitney Drake or some other National employee at Atlantic City and then subsequent discussions or I saw it. I don't really recall.

Q In other words, you don't recall?

A I recall specifically being told that the letter was sent. I don't recall if it was told to me or I saw it.

Q Did they tell you who sent the letter?

A It was sent by National. That's what was indicated to me. I don't know who specifically was

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

undersigned.

Q Do you know whether it was sent by Clarence Lyon for National or by somebody at National?

A It was told to me it was sent by National.

Q Was it told to you by whoever told it to you that they had never gotten a response to that letter?

A No.

Q At any time did anybody tell you that they got no response to that letter.

A I testified that they indicated to me clearly that the file will be turned over to us when we are finished with the purchase of the Atomichron product line.

Q They told you first you pay and close and then they will show you what they did with Hewlett-Packard.

A That the files will be turned over at that time. I requested quite a few files and that was the specific answer.

Q And Mr. Bloch, did you regard that claim against Hewlett-Packard that they were infringing and that they should either cease and desist or pay royalties as important to your purchase?

A Of prime importance.

Q Prime importance?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes. Mr. Schreiber, are you talking about the patent or are you talking about the letter?

Q Was it of prime importance to you, in making your purchase, to be able to go to Hewlett-Packard and say, "Cease and desist or else pay me a royalty?

A Yes, it was.

Q Unless you could do that you didn't want to buy the deal?

A If I couldn't have this patent protection, I didn't want to do the deal.

Q If you couldn't get Hewlett-Packard to eiher cease or desist or else pay you a royaltv,you would not have taken the deal, would you?

A That's correct.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q And prior to the closing on February 3, 1969 you never saw a reply from Hewlett-Packard?

A That's correct.

Q And you never saw the file?

A (No response.)

Q Of the so-called letter to Hewlett-Packard?

A That's correct.

Q And you went ahead and closed in reliance upon whose statement that they would turn it over to you at the closing?

A The personnel at National Company.

Q Who?

MR. GOLDMAN: Objection, your Honor.

THE COURT: Overruled. Sit down.

Q Who?

A I believe it was -- again all of these meetings weren't with one individual at National Company. There were always a slew of people present. It was either Mr. Whitney Drake or Mr. Frank Oddi, or there were two gentlemen which come to mind, at least physically they are almost identical in my mind, and it was either Ray Horner or somebody else, but I believe his name was John Over.

Q What was John Over's position there?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I have no idea. I believe he was at the present time intimately involved with the atomic product line.

Q I have no idea. I believe he was at that time intimately involved with the atomic product line.

Q If I understand you, Mr. Bloch, you went ahead and achieved and paid out your money and signed your notes and did the deal on the assurance of either Mr. Horner or Mr. Over, whose position youi don't know, or maybe it was Mr. Oddi, or maybe it was Whitney Drake, but somebody told you that after you paid your money they would show you what was in that file, is that right?

A No.

Q Then you correct me, sir. I may have misunderstood vou.

A Okay. I specifically set up that meeting at Mr. Lerner's office because of my apprehension, and when two chief executives of a company gave me a memorandum, that is good enough for me.

Q Mr. Bloch, I'm not talking about the memorandum now. I am talking about the claim against Hewlett-Packard, and you are able to press Hewlett-Packard to the wall and say, "Either you pay or you stop."

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Mr. Schreiber, my hearing is very good. I would appreciate it if you wouldn't shout.

THE COURT: Yes, so would I.

MR. SCHREIBER: I am sorry. I apologize. Maybe if I stand here it will be better.

A You didn't ask me that. You asked me on what did I rely in making the purchase and I tried to give you a responsive answer.

Q And you told me that somebody, you couldn't remember whether it was Mr. Drake, Mr. Over, Mr. Hoirner or Mr. Oddi, but somebody at National told you that after the closing you would get the file at Hewlett-Packard, is that right?

A Could you please rephrase the question because I have lost your question? I am sorry.

Q I will try to simplify it.

A Thank you.

Q Do I understand that somebody at National told you that after the closing you would get the file setting forth the correspondence with Hewlett- Packard?

A That's correct.

Q And do I understand that you couldn't remember just who it was that told you that?

A I testified that all of the meetings were

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

attended by a large number of people from National.

Q I understand that. And you testified that you couldn't remember who told you that after the closing you would get the file?

A I said that it was most likely Mr. Whitney Drake or Frank Oddi, or these two tall gentlemen which I am trying to place names and faces, either John Over or Ray Horner.

Q Most likely, but you don't remember which?

A I don't remember that. But they were all present.

Q And on that assurance you closed that meeting and --

A I went and had a meeting set up with Lou Lerner and when I received a memorandum handed to me in that office by the two chief executives of the company, based on th eir presentation in that memorandum, then I proceeded with the deal.

Q By the way, you said at that meeting at Mr. Lerner's office that it was set up at a time when there was going to be an executive committee meeting of National so that Lerner and Oddi would be available?

A That's what my recollection is, or some meeting in New York between Mr. Lerner and Mr. Oddi. I

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

believe it was exactly the meeting but definitely a meeting between Mr. Lerner and Mr. Oddi.

Q Who handed you that piece of paper that you claim you got at that meeting?

A Either Mr. Lerner or Mr. Oddi. They were both present in the office. There were three of us there.

Q Now let's get to the Zacharias patent, which I think you said was a key patent.

A Yes, sir.

Q There 19 patents involved in this transaction, were there not?

A Yes.

Q And there was a lot of so-called hardware involved in this transaction, was there not?

A There was hardware involved.

Q In fact, there were a goodly number of completed Atomichrons involved, were there not?

A No. You are incorrect. There none completed.

THE COURT: I am coming to a point where I will have to suspend for the day. I have other matters coming in here.

I will resume with you at 10:30 tomorrow

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

morning.

MR. SCHREIBER: Thank you, your Honor.

(Adjourned to June 10, 1975, at 10:30 a.m.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7 4580

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Martin Bloch	18	69		

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
49		36

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK N.Y. CO 7-4580